UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-RDD

- -x

In the Matter of:

DPH HOLDINGS CORP., et al.,

Reorganized Debtors.

- -x

U.S. Bankruptcy Court

300 Quarropas Street

White Plains, New York

May 20, 2010

10:12 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

Fifty-Fifth Omnibus Hearing:

Hearing re: Furukawa Electric Company's Motion for Allowance of Administrative Expense Claim - Motion Of Furukawa Electric Company, Ltd. For Allowance Of An Administrative Expense Claim, Pursuant To 11 U.S.C. 503(b)(1)(A) And, In The Alternative, For Leave To File A Late Administrative Expense Claim Pursuant To Bankruptcy Rule 9006(B)

Hearing re: Salaried Retirees' Motion - Motion Of The Salaried Retirees For Order Confirming That Second Amended Complaint Does Not Violate The Modified Plan Or The Plan Modification Order and Amended Motion Of The Salaried Retirees For Order Confirming That Second Amended Complaint Does Not Violate The Modified Plan Or The Plan Modification Order

Hearing re: Davidson Kempner Capital Management LLC, et al. Substantial Contribution Application - Application By Davidson Kempner Capital Management LLC; Elliott Associates, L.P.; Nomura Corporate Research & Asset Management, Inc.; Northeast Investors Trust; SPCP Group, LLC; And Whitebox Advisors, LLC, On Behalf Of Themselves And Senior Noteholders Previously Represented, For Payment Of Fees And Expenses Pursuant To 11 U.S.C. § 1129(a)(4) And Bankruptcy Rule 9019

Hearing re: Motion for Case Management Order Governing Avoidance Action Adversary Proceedings - Reorganized Debtors' Motion For A Case Management Order Establishing Procedures Governing Adversary Proceedings

Hearing re: Reorganized Debtors' Motion to Limit Service - Reorganized Debtors' Motion For Order Under Fed. R. Bankr. P. 2002(m) And 9007 Supplementing Case Management Orders By (A) Limiting Service Of All Future Filings And (B) Authorizing Service By Electronic Mail For All Future Filings

Hearing re: Forty-Seventh Omnibus Claims Objection - Reorganized Debtors' Forty-Seventh Omnibus Objection Pursuant to 11 U.S.C. § 503(b) and Fed. R. Bankr. P. 3007 to (I) Disallow and Expunge (A) Certain Administrative Expense Books and Records Claims, (B) a Certain Administrative Expense Duplicate Claim, and (C) Certain Administrative Expense Duplicate Substantial Contribution Claims, and (II) Modify Certain Administrative Expense Claims

Hearing re: Paul C. Mathis' Motion for Jury Trial - Paul C. Mathis' Motion For Trial For Jury

Hearing re: Motion of Methode Electronics, Inc. - Notice Of Motion By Methode Electronics, Inc. For An Order (I) Permitting Methode To Continue Post-Petition Litigation With The Reorganized Debtors In Michigan And (II) Overruling The Reorganized Debtors' Timeliness Objection To Methode's Administrative Expense Claims

Hearing re: IUE-CWA Substantial Contribution Application - Motion Of IUE-CWA Pursuant To Sections 503(b)(3)(d) And (b)(4) Of The Bankruptcy Code For Allowance And Payment Of Fees Incurred In Making A Substantial Contribution To The Debtors' Chapter 11 Case

Hearing re: Certain Senior Noteholders Substantial Contribution Application - Summary Sheet And Application Of Certain Senior Noteholders Pursuant To Sections 503(b)(3) And (4) Of The Bankruptcy Code For Allowance And Reimbursement Of Reasonable Compensation And Actual, Necessary Expenses In Making A Substantial Contribution In These Chapter 11 Cases

Hearing re: Delphi Trade Committee Substantial Contribution Application - Application Of The Delphi Trade Committee For Reimbursement Of Expenses Arising From Substantial Contribution Made In These Cases And Notice Of Filing Of Exhibits To Application Of The Delphi Trade Committee For Reimbursement Of Expenses Arising From Substantial Contribution Made In These Cases

Thirty-Third Claims Hearing:

Sufficiency Hearing Regarding Claims of Jose C. Alfaro and Martha Alfaro - Sufficiency Hearing Regarding Claims of Jose C. Alfaro and Martha Alfaro as Objected to on Reorganized Debtors' Thirty-Sixth Omnibus Objection Pursuant To 11 U.S.C. § 502(b) And Fed. R. Bankr. P. 3007 To (I) Modify And Allow Claim And (II) Expunge Certain (A) Duplicate SERP Claims, (B) Books And Records Claims, (C) Untimely Claims, And (D) Pension, Benefit, And OPEB Claims and Reorganized Debtors' Thirty-Seventh Omnibus Objection Pursuant To 11 U.S.C. § 502(B) And Fed. R. Bankr. P. 3007 To Expunge Certain (I) Prepetition Claims, (II) Equity Interests, (III) Books And Records Claims, (IV) Untimely Claims, (V) Paid Severance Claims,(VI) Pension, Benefit, And OPEB Claims, And (VII) Duplicate Claims

Sufficiency Hearing Regarding Claims of Marc Eglin - Sufficiency Hearing Regarding Claims of Marc Eglin as Objected to on Reorganized Debtors' Forty-Third Omnibus Objection Pursuant To 11 U.S.C. § 503(b) And Fed. R. Bankr. P. 3007 To (I) Expunge Certain Administrative Expense (A) Severance Claims, (B) Books And Records Claims, (C) Duplicate Claims, (D) Equity Interests, (E) Prepetition Claims, (F) Insufficiently Documented Claims, (G) Pension, Benefit, And OPEB Claims, (H) Workers' Compensation Claims, (II) Modify And Allow Certain Administrative Expense Severance Claims, And (III) Allow Certain Administrative Expense Severance Claims

Sufficiency Hearing Regarding Claims of James A. Luecke - Sufficiency Hearing Regarding Claims of James A. Luecke as Objected to on Reorganized Debtors' Thirty-Seventh Omnibus Objection Pursuant To 11 U.S.C. § 502(B) And Fed. R. Bankr. P. 3007 To Expunge Certain (I) Prepetition Claims, (II) Equity Interests, (III) Books And Records Claims, (IV) Untimely Claims, (V) Paid Severance Claims,(VI) Pension, Benefit, And OPEB Claims, And (VII) Duplicate Claims and Reorganized Debtors' Forty-Fifth Omnibus Objection Pursuant To 11 U.S.C. § 503(b) And Fed. R. Bankr. P. 3007 To (I)Expunge Certain Administrative Expense (A) Severance Claims, (B) Books And Records Claims, (C) Duplicate Claims, (D) Pension And Benefit Claims, And (E) Transferred Workers' Compensation Claims, (II) Modify And Allow Certain Administrative Expense Severance Claims, And (III) Allow Certain Administrative Expense Severance Claims

Transcribed by: Hana Copperman

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P R O C E E D I N G S

THE CLERK: All rise.

THE COURT: Please be seated. Okay. DPH Holdings.

MR. MEISLER: Good morning, Your Honor.

THE COURT: Good morning.

MR. MEISLER: Ron Meisler of Skadden, Arps on behalf of DPH Holdings and its affiliated reorganized debtors. Your Honor, yesterday afternoon we filed a proposed agenda, and if Your Honor is comfortable we'd like to proceed in that order.

THE COURT: That's fine.

MR. MEISLER: Thank you, Your Honor. Your Honor, the first matter on the agenda, Furukawa Electric Company's motion for allowance of administrative expense, Your Honor, that's been adjourned.

THE COURT: Okay.

MR. MEISLER: And Togut, Segal & Segal is handling that matter. Your Honor, if you're comfortable we'll go to the next matter, the salaried retirees' motion. Confirming that the second amended complaint does not violate the modified plan or the plan modification order. Your Honor, we were in discussions with them in the last few days. We submitted a scheduling order adjourning that matter to June 30th. The reorganized debtors are going to try and negotiate a resolution --

THE COURT: Right.

MR. MEISLER: -- so that no contested matter has to be before Your Honor.

THE COURT: Okay. I think I've already signed that order.

MR. MEISLER: Terrific. Thank you, Your Honor. Your Honor, the next matter on the agenda, number 3, is the senior noteholders application for payment of certain fees and expenses under 1129(a)(4). Your Honor, again, that's another matter that we've been in discussions with the senior noteholders. We've submitted a scheduling order.

THE COURT: Right. And I believe I -- it should be added by now. I signed it yesterday. Both of those orders limit the objections to today, I think, or yesterday, actually, right?

MR. MEISLER: With respect to the senior noteholders and C.R. Intrinsic --

THE COURT: Right. Okay.

MR. MEISLER: -- that is correct.

THE COURT: Okay.

MR. MEISLER: Your Honor, the next matter on the agenda is the motion for a case management order governing avoidance actions and adversary proceedings handled by Butzel Long. Your Honor, this matter, as well, has been adjourned.

THE COURT: Right. Unless there have been recent developments that you want to inform me of you don't need to go

through the adjournments or the --

MR. MEISLER: Terrific.

THE COURT: Okay.

MR. MEISLER: Thank you. Your Honor, for the next matter on the agenda, which is the reorganized debtors' motion to limit service, I'm going to turn the podium over to my colleague, Brandon Duncomb, who will present that motion.

THE COURT: Okay.

MR. DUNCOMB: Good morning, Your Honor.

THE COURT: Good morning.

MR. DUNCOMB: Brandon Duncomb, Skadden, Arps, Slate, Meagher & Flom, for the reorganized debtors. Before I start I had a pro hac application that I had submitted this morning. I think that's still pending.

THE COURT: You should consider that granted.

MR. DUNCOMB: Thank you, Your Honor. So the reorganized debtors' motion to limit service is at docket number 19968. Since the debtors emerged from bankruptcy in October of last year they have incurred, on average, 75,000 dollars in fees attributable to service for parties on the master service list and the 2002 list. By this motion what we're trying to do is, basically, two things, reconstitute both of those service lists, and, then, with respect to the master service list, replace the overnight filings with electronic service by e-mail.

THE COURT: You served all the parties on the existing lists?

MR. DUNCOMB: Yes.

THE COURT: And I didn't see any objections to the relief.

MR. DUNCOMB: That's right. That's uncontested.

THE COURT: Okay. All right. Does anyone have anything to say on this motion? All right. I have no problem with it, and, therefore, I'll approve it.

MR. DUNCOMB: Thank you, Your Honor.

THE COURT: Thanks. So I don't know if you're going to be handing me orders at the end of the hearing or you can e-mail me the order to chambers later.

MR. CHIAPPETTA: Thank you, Your Honor. Louis Chiappetta on behalf of the reorganized debtors, Skadden, Arps. Your Honor, the first contested matter on today's agenda is the forty-seventh omnibus objection, which was filed April 16th at docket number 19873 and was served in accordance with the claims procedures order, including individualized particularized notice. Your Honor, there's eighty-eight claims that were subject to this objection, one of which was filed by Hyundai and resolved by stipulation number 20,000, and another that was filed by Silver Point that was resolved by stipulation at docket number 20,131

THE COURT: Right.

MR. CHIAPPETTA: So there's eighty-six --

THE COURT: I think I've already signed those two.

MR. CHIAPPETTA: Correct, you have. Thank you, Your Honor.

THE COURT: Okay.

MR. CHIAPPETTA: And there's eighty-six remaining claims. Of those forty administrative expense claims have been adjourned by thirty-four filed responses. Forty-six claims remain subject to the objection, which cover, in the aggregate, about twenty-four million dollars. The bulk of these claims, Your Honor, are books and records claims that most have been paid in the ordinary course, and the remaining are duplicate claims and duplicate substantial contribution claims, which you know are before Your Honor today.

I believe this is the level of detail that we've done in the past for omnibus objections. If you'd like I can go into more detail.

THE COURT: No, you don't need to. Is there anyone present who has anything to say on this omnibus objection? Okay.

MR. MEARS: Your Honor, Patrick Mears on behalf of Bank of America. I'm just listening in to confirm that our matters, our various claims have been adjourned. Reading the response I believe that's the case.

MR. CHIAPPETTA: Yes, Your Honor, I can confirm those

have been adjourned.

THE COURT: Okay. All right. So today you're asking for approval of the objection insofar as it applies to the unopposed matters.

MR. CHIAPPETTA: Correct, Your Honor. All other matters are adjourned.

THE COURT: All right.

UNIDENTIFIED SPEAKER: Wait. Objection. My matter here meets at court today at 10 a.m.

THE COURT: No, no, no. We're just talking about this omnibus.

UNIDENTIFIED SPEAKER: Okay. Sorry.

THE COURT: This omnibus motion.

UNIDENTIFIED SPEAKER: Okay.

THE COURT: This specific one.

UNIDENTIFIED SPEAKER: All right, Judge.

THE COURT: So in light of there being no opposition in the averments in the motion with regard to the unopposed claims I'll grant that relief.

MR. CHIAPPETTA: Thank you, Your Honor.

THE COURT: Thanks.

MR. CHIAPPETTA: Your Honor, the next contested matter is the pleading that was filed by Paul C. Mathis at docket number 19899 on April 21st.

THE COURT: Right.

MR. CHIAPPETTA: Your Honor, Mr. Mathis filed this same exact pleading in the General Motors case In re Motors Liquidation Company, and Judge Gerber denied this motion sua sponte at docket number 5539. It's unclear what Mr. Mathis is exactly requesting, Your Honor, and outside of two claims that have been previously expunged by this Court the reorganized debtors are unaware of any relationship with Mr. Mathis.

THE COURT: All right. The pleading you're referring to asks for a jury trial on something.

MR. CHIAPPETTA: Correct.

THE COURT: But, again, you are correct that except for the two claims of Mr. Mathis, both of which have previously been disallowed, I have no idea what the jury trial request would apply to, and given that the two claims have been disallowed and the jury trial request sets forth no basis under Rules 9023 or 9024 -- it would be 9024 here, given the time --I don't see any basis for the request. Is Mr. Mathis here or on the phone? All right. For that reason I'll grant the objection.

MR. CHIAPPETTA: Thank you, Your Honor.

MR. MEISLER: Your Honor, the next matter on the agenda is the motion of Methode Electronics. Your Honor, for that matter counsel for Methode is here in the courtroom. If it pleases Your Honor I'm going to cede the podium to counsel and let them present their motion.

THE COURT: Okay.

MR. MEISLER: Your Honor, as a preliminary matter I' just like to touch on the exhibits that were filed --

THE COURT: Okay.

MR. MEISLER: -- and the exhibits that we have with us today. There are twelve numbered items on the exhibit index list that we are submitting into evidence for this matter. Each of the first eleven have either been filed on the docket in some place in the Delphi case or, now, the DPH case, and the twelfth is the declaration of Ann Walsh, which has approximately twenty-six exhibits.

Your Honor, we are okay with the exhibits being admitted into evidence to show what was alleged and when. But, Your Honor, we would object to any of the exhibits being entered to show the truth of the matter asserted.

THE COURT: Okay. Well, this is not a hearing on the merits of the claim. It's on the issue of timeliness as well as the proper forum for the termination of the claims, so I'm assuming there's no problem with the debtors' reservation on this.

MR. MAYER: No, Your Honor, Douglas Mayer from Wachtell, Lipton, Rosen & Katz for Methode Electronics. We have no problem with that. I mean, we just got the binder. We haven't reviewed what's in it.

THE COURT: Okay.

MR. MAYER: Based on what counsel says, that it's all filings on the docket, then we have no difficulty with that, because Your Honor's characterization of today's matter, I think, is accurate.

THE COURT: Okay. All right.

MR. MAYER: Okay. Good morning,

THE COURT: Good morning.

MR. MAYER: Again, thank you. So Wachtell, Lipton, Rosen & Katz is bankruptcy counsel for Methode Electronics here, the movant. Also with us on this matter is the Locke Lord Bissell law firm and, in particular, Ann Marie Walsh, who's with us today and is counsel to Methode Electronics in connection with the contract litigation that's extensively discussed. I believe that a pro hac motion was made for Ms. Walsh's admission here for this matter. I don't know that that's been acted on by the Court.

THE COURT: Okay. Well, you should assume it's granted.

MR. MAYER: Yes.

THE COURT: There have been a number of Delphi pro hac motions recently, so I'm not -- I remember this one in particular. Okay.

MR. MAYER: Thank you. And as noted by the Court and by Mr. Meisler for the debtor, what's before the Court today is a request from Methode addressing the questions of form and

asking the Court, as well, to make a determination as to timeliness with respect to these claims. And I'm sure the Court has viewed the papers that have been submitted by the parties here, so I don't plan on rehearsing that detail for the Court. We're basically here to address the Court's questions and concerns, although there are some specifics that I would like to highlight for the Court's benefit.

THE COURT: Okay. Before you get to that, I just want to make sure I understand what it is that is still being contested by the parties. As I understand it, leaving aside the issue of the timeliness of the patent claim as it pertains to alleged patent infringement before the --

MR. MAYER: June 1, Your Honor.

THE COURT: June 1, right. I understand from the debtors' response that the debtors don't oppose the continuation of the patent litigation in the Michigan District Court.

MR. MAYER: That certainly was my understanding. Obviously, the debtors will represent as they see fit.

MR. MEISLER: Your Honor, subject to this Court's determination on scope, that is correct, Your Honor. We would be amenable to lifting the plan injunction so that the patent litigation could go forward in the federal court, Eastern District of Michigan.

THE COURT: Okay. All right. And, then, so that's --

that, I just, I believe, then, leaves the issue of the portion of the claim that covers the alleged pre-June infringement, because the rest of it, again, I think the debtors acknowledge, is either outside of the scope of the administrative claims bar date, because it's post bar date, post bright-line for the bar date activity, and/or it's been picked up by the buyer.

MR. MAYER: Yes. That's my understanding, Your Honor.

THE COURT: Okay. So, then, turning to the contract action, and this one, I think, is more of a question for Methode, I have some confusion about the contract claim. Methode states that, correctly, it filed an anticipatory breach claim, and that was obviously one that, I think, arose pre June, because that was part of its complaint in the state court action, but that it also has an actual breach claim based upon Delphi's termination of the contract, which was done after the June date and, therefore, wouldn't be covered by the bar date.

And I guess my question is now that there's an actual breach claim, what are we talking about as far as an anticipatory breach claim? Am I missing something or --

MR. MAYER: No, you're not missing something, Your Honor, and I thank you for bringing this up. This was one of those specific aspects that I did want to concentrate on, because we realized, frankly, that it would be easy for the Court not to see clearly what was still outstanding and what wasn't. So I think the Court is correct in nothing that in the

counterclaim that was discussed in the papers and that was interposed by Methode in Michigan there was a claim stated for anticipatory breach, which was back in January of 2009.

THE COURT: Right.

MR. MAYER: Needless to say, what's turned out is that that which was anticipated ultimately occurred, in a sense mooting that anticipatory breach claim, and just to cut through it, then, what one has at this point in time as a live claim, so to speak, in a colloquial sense, I think, is a claim where we say that Delphi's termination, which occurred August 26th/27th of 2009, was in breach. Delphi, of course, has their merits arguments as to why that was not the case.

THE COURT: Right.

MR. MAYER: And that claim had not been pleaded in Michigan. It is a claim that can be pleaded in Michigan, just like it could be pleaded anywhere else under the applicable pleading rules, and is one that we would be prepared to proceed forward with in Michigan in the event that the Court were to either modify the injunction or consider the injunction to be inapplicable.

THE COURT: All right. So just to be clear then. At this point Methode's contract claim is a claim predicated upon post bar date conduct.

MR. MAYER: That is certainly our view, Your Honor. I think what the debtors have suggested -- they suggested this in

their response papers, and obviously we'll hear from them. I think they would argue that in some sense one must view the claim as relating back to the pre June 1 period, in that there were events that occurred at that time that indicated that there was an act of bad faith in entering into the contract.

THE COURT: But if what you're saying -- what Methode is saying is that its damage flow solely from the post bar date breach.

MR. MAYER: Yes.

THE COURT: Then I --

MR. MAYER: That is definitely our view. In terms of damages, I think that regardless of whether people may have had motives or intentions or done other things that led up to a termination in August prior to June 1, all the damage relates to the balance of the term of the contract after the termination, which was effective as of September.

THE COURT: Okay.

MR. MAYER: So I'm, again, I'm glad that Your Honor raised this.

THE COURT: So as far as Methode is concerned this is, literally, the flip side of the patent case. The only issue to be argued here, as far as Methode is concerned, is the proper forum for handling the contract claim.

MR. MAYER: Well, Your Honor, I guess what I'm --

THE COURT: There's no untimeliness --

MR. MAYER: Yes.

THE COURT: -- issue, because you're saying that the claim here is all based upon a wrong by Delphi that occurred after the bar date.

MR. MAYER: That, again, that is our view. I would reiterate that -- I guess, maybe I should let the debtor speak for themselves, that what they seem to be arguing in their papers, and they'll say whatever they say today, is that somehow there was enough of a nucleus of conduct prior to June 1 that that makes the claim, somehow, a pre June 1 claim. I don't get that.

THE COURT: Okay.

MR. MAYER: It doesn't make any sense to me. But I think that may be the position, so to that extent, I guess, we're arguing about that today.

THE COURT: All right.

MR. MAYER: Unless the Court wants to defer that to another occasion, frankly, even the Court in Michigan could address that kind of an issue if it saw fit.

THE COURT: Okay. All right. So why don't I hear from you, Mr. Meisler on that issue.

MR. MEISLER: Your Honor, I'm glad that you're bringing up that clarification, because I guess I'm confused as well. I looked at their papers, and I --

THE COURT: No, No. The claim in the papers raised

the possibility, just as with the patent claim, that there's some additional wrongdoing that gives rise to a basis for a claim before the bar date.

MR. MEISLER: That --

THE COURT: But they're very clear on the record today that that's not their position, that it's the breach in August that is the basis for the claim.

MR. MEISLER: Terrific, Your Honor. With that record I am similarly comfortable.

THE COURT: Okay. All right. So I conclude, then, that the issue of the timeliness of the -- I guess, when was it filed? September?

UNIDENTIFIED SPEAKER: Sorry. When was what filed, Your Honor?

THE COURT: Your proof of -- the admin claim.

UNIDENTIFIED SPEAKER: Oh, no. It was filed in early November --

THE COURT: I'm sorry. November.

UNIDENTIFIED SPEAKER: -- within the -- with --

THE COURT: The timeliness of the November claim as it applies to the contract claim issue. That issue is moot, given the clear statement on the record today, which I think is implicit in also the reply that you filed, that the contract claim against DPH that's being asserted, and the only contract claim that's being asserted on this contract, is based upon the

August termination, the claim of breach in August. And, obviously, a claim for anticipatory breach is different than a claim for actual breach, and you're asserting a claim for actual breach now, not anticipatory breach.

MR. MAYER: Right. Because --

THE COURT: Okay.

MR. MAYER: -- there's no anticipating anymore.

THE COURT: All right.

MR. MAYER: That's right.

THE COURT: So I think --

MR. MEISLER: Your Honor? For clarification, that means that any conduct pre June 1st is time barred.

THE COURT: Right.

MR. MEISLER: So --

MR. MAYER: Well, we can discuss -- I'm sorry. I don't want to interrupt the Court.

THE COURT: Well, I'm sorry. No, you should go ahead.

MR. MAYER: I'm not sure what it means to say that there is a bar with respect to conduct prior to June 1st.

THE COURT: Well, it doesn't give rise to a claim. The claim is based on a breach. I mean --

MR. MAYER: Right. And, again -- yes.

THE COURT: -- the conduct may be relevant to --

MR. MAYER: Yes. That's --

THE COURT: -- whether there was a breach.

MR. MAYER: That's exactly my point, Your Honor. There could be plenty of relevant evidence. I don't think that it's --

THE COURT: But it's not independently the basis a claim.

MR. MAYER: That's correct. In terms of the elements of a cause of action that is correct. Again, there could be evidence of bad faith. In our view, all of that sort of thing that occurred prior to the bar date, I don't think that the law is, and it doesn't really make any sense to say that all has to be excluded.

THE COURT: But the basis -- well, that will be up to either me or the state court. But the basis --

MR. MAYER: Right.

THE COURT: -- for the claim is limited to a claim that occurred after the bar date.

MR. MAYER: Yes, I think I would agree with that. All these formulations a little bit slippery, as Your Honor appreciates, and may --

THE COURT: I don't think they are. I think it has to be clear. I mean, you could, conceivably, although I think it's probably, well, I don't know. Maybe it isn't conceivable. I guess you could assert a claim for anticipatory breach and breach, but I think --

MR. MAYER: Oh, no. Yes. That's not what I'm in any

way hesitant about.

THE COURT: All right.

MR. MAYER: That's --

THE COURT: All right.

MR. MAYER: That's absolutely right. We're not doing that.

THE COURT: Okay.

MR. MEISLER: Your Honor, to me it's crystal clear, so for purposes of facilitating the dialogue between me and Mr. Mayer, in particular, I just want to at least be clear on my understanding, which is I had understood their papers to say because of the bad faith that took place pre June 1st the clear and unambiguous language of paragraph 11 of the terms and conditions, which is the termination for convenience clause, is not enforceable or is rendered null and void. To be clear, that argument, the bad faith argument, to me I actually thought that was the claim that they were asserting that occurred, if you will, post June 1.

THE COURT: Delphi's alleged bad faith before the bar date would not be a basis for this claim.

MR. MEISLER: Terrific. Thank you, Your Honor.

THE COURT: I would not be a separate basis for the claim. That's, I think, different than saying that you can look at Delphi's conduct, generally, to see whether there was a breach post bar date.

MR. MAYER: I mean, I don't -- and, again, I'm not -- I'm hesitating just to try to think about what Your Honor is saying. I don't disagree with that.

THE COURT: You don't have a bad faith claim based upon their whatever, you know, breach of duty of good faith and fair dealing claim, for example, based on pre bar date activity.

MR. MAYER: Yes. I think that is right.

THE COURT: Okay.

MR. MEISLER: Thank you, Your Honor.

MR. MAYER: That's right. I mean, cocounsel, I think, perhaps, addressed this, and she's waving her hand at me if Your Honor would please to hear from here.

THE COURT: Okay.

MS. WALSH: May I address the Court, Your Honor?

THE COURT: Yes, but you should at least stand by that microphone so you can be picked up?

MR. MAYER: Do you want to do it there or over here? It's up to you.

THE COURT: Wherever you're comfortable.

MS. WALSH: I guess I'm a little confused, Your Honor, and thank you for permitting me to speak today. Certainly Delphi's bad faith during contract negotiations is the basis for our counterclaim. The important --

THE COURT: No, it isn't. It's not the -- that's what

we've just gone through.

MS. WALSH: I know.

THE COURT: It may be relevant to whether there was a post bar date breach, but it's not --

MS. WALSH: Okay.

THE COURT: -- the basis that gives rise to a claim.

MS. WALSH: We are not bringing a claim for Delphi's bad faith, just so I can clarify that.

THE COURT: Okay.

MS. WALSH: But the basis for -- Delphi's bad faith, and the judge in Michigan certainly acknowledged this and recognized this, Delphi's bad faith --

MR. MEISLER: Your Honor, I object to that characterization.

THE COURT: I think -- let me anticipate what you're trying to say, which is that you may assert as a response to Delphi's argument that we had a perfect right to terminate the contract. Some sort of pre bar date fact, as long as that pre bar date fact does not, in and of itself, give rise to a separate claim.

MS. WALSH: Yes.

THE COURT: Okay. I.e., the only claim you're asserting is a post bar date breach.

MS. WALSH: Yes.

THE COURT: Okay. All right.

MS. WALSH: Thank you.

MR. MAYER: Good. We appreciate the clarification.

THE COURT: Okay.

MR. MAYER: All right.

THE COURT: All right. So that leaves, then, I think, the issue of the pre June period for the patent claim and whether that claim is barred by the bar provisions of the order and the plan and then the forum issue on the contract claim.

MR. MAYER: Okay.

THE COURT: So you can argue those however you wish.

MR. MAYER: Yes. Good question.

THE COURT: Or in what order you wish.

MR. MAYER: Because, frankly, the parties, as I think the Court saw, the parties didn't particularly focus on the patent pre June claim to the extent it is an independent claim, and I, I guess, my own perspective on that, respectfully, is that that is an issue, the issue, if you will, of apportionment or division or whatever one wants to call it with respect to the infringement that is asserted, that that's an issue that, I think, inevitably requires some substantial examination of the law, patent law that is to say, the law relevant to the merits, as well as the conduct, or the alleged conduct, that relates to the acts of infringement. And I would suggest that that's best addressed by that forum which is dealing with the merits.

THE COURT: But, I guess, the point is, though, that

why should DPH have to participate in that litigation on that issue if it's barred? Why should they even --

MR. MAYER: Well, that's a fair question. I mean, they're there now --

THE COURT: No, I know.

MR. MAYER: -- in that action.

THE COURT: But you would have to spend some amount of lawyer and judge time apportioning --

MR. MAYER: Yes.

THE COURT: -- pre June and post June --

MR. MAYER: Yes.

THE COURT: -- and if it's barred then no one would have to do that. If it's time barred.

MR. MAYER: If --

THE COURT: If the claim was late on that issue.

MR. MAYER: But, Your Honor, my understanding is that the debtors have conceded that with respect to the post June 1, as I think this is where we started your set of questions, with respect to the post June 1 that that's outside of the time bar.

THE COURT: Oh, I know. I understand. So we're just talking about that pre June 1 period.

MR. MAYER: Right. And my point --

THE COURT: Do the debtors oppose that also being adjudicated or are you relying on the bar date to bar the adjudication of that --

MR. MEISLER: Your Honor, we're relying on the bar date to bar the adjudication of pre June --

MR. MAYER: Sure. No, that's -- and I didn't think that they were not.

THE COURT: Okay.

MR. MAYER: My point is, Your Honor, that in order to think specifically about the pre June 1 patent claim, that that is a determination that requires delving into the merits of the claim, and that it would be best done by the forum which is going to --

THE COURT: Oh, no. The forum is --

MR. MAYER: -- deal with the merits of the claim.

THE COURT: If I determine that your claim is timely or should be deemed timely then, clearly, the forum would handle it. I don't have any problem with that. I'm now talking just about the allowance issue.

MR. MAYER: Okay. Look, I mean, we can go through the various points that we've made in our papers with respect to the terms of the plan and the conduct of litigation and all that. That certainly applies to the patent litigation as well as to the contract litigation.

THE COURT: Okay.

MR. MAYER: That's fine. I don't think I need to go over all that in detail for the Court. I can to the extent you want. I mean, we think the same plan provisions that we cited

would say that there's been an agreed alternative resolution process, would also determine the allowability, or the allowance, I should say, of the pre June 1 patent infringement.

THE COURT: Okay. On the patent side I haven't seen anything in the record to suggest that the debtors -- well, let me -- as far as the patent claim is concerned, are you alleging that debtors waived the issue of the bar date?

MR. MAYER: Well, to a degree, yes, in the sense that the structure that we argue is in the plan is a structure that permits people to go off and litigate in a forum other than this court to reach an allowance of a claim. And, necessarily, any allowance of any claim involves, among other things, its timeliness.

THE COURT: Okay. But beyond that plan reading --

MR. MAYER: Yes.

THE COURT: -- of the term allowed claim --

MR. MAYER: Yes.

THE COURT: -- was there any conduct by Delphi in the Michigan patent litigation that would indicate that, you know, basically Delphi said to you all we're dealing with this here.

MR. MAYER: Well, sure. I mean, we --

THE COURT: We're negotiating this --

MR. MAYER: I'm sorry. You were going to --

THE COURT: We're, you know, let's negotiate this out and --

MR. MAYER: I don't know about negotiating it out, Your Honor.

THE COURT: Okay.

MR. MAYER: That I have no knowledge of --

THE COURT: Okay.

MR. MAYER: -- in any event. But, certainly, as Your Honor is aware from papers and the exhibits, a patent suit was brought by Methode in the Northern District of Illinois against Delphi. Not the buyer, which didn't exist at that time. Delphi did not seek to bring the claim here. Delphi, at no time, has even made the kind of motion that it made on the contract side to say that the claim should come here, in which papers in Michigan Delphi also suggested, for the first time, that there was a time bar on the contract side. There's never been anything like that. The patent case is, as I understand it, continuing forward as to everybody, that is to say not just the buyer and not just Marion, the third party, and Methode, but also as to Delphi. I think that there has been continuing discovery in those kinds of events and probably happening today.

THE COURT: Okay.

MR. MAYER: So at all points in time that's been the case.

MR. MEISLER: Your Honor, that's just that's not the case.

THE COURT: But isn't -- but isn't --

MR. MAYER: Well, that's fine. I don't want -- I'm not trying to testify from the podium, and all I can speak to is what we've put in the record, which I think is in the Walsh declaration that the Court has with respect to that.

THE COURT: Okay. But isn't, I mean, consistent with how we began this hearing, isn't that all understandable in light of the fact that the patent litigation asserts ongoing --

MR. MAYER: Yes.

THE COURT: -- including post bar date --

MR. MAYER: Yes.

THE COURT: -- activity?

MR. MAYER: You could say gee, everybody really means that that only pertains to the post June 1 conduct.

THE COURT: Right.

MR. MAYER: Of course, nobody's ever said that. That's not the reality of what's been said, and I think if somebody has said that then I'm sure we'll hear about it shortly. But to my understanding, and based on what we've put into the record, there's been nothing like that. One could interpret the record in that fashion, but I don't think it's a reasonable interpretation, frankly.

THE COURT: Okay.

MR. MAYER: Okay.

THE COURT: Okay.

MR. MEISLER: Your Honor, for clarification, in connection with the patent litigation there was no inducement whatsoever or encouragement whatsoever that Methode refrained from filing a claim in the bankruptcy case. That did not occur. They were suing us for patent infringement. It was the beginning. The case is in its infancy, and, so, all that's really happened in that patent case is there's been some discovery that's commenced.

THE COURT: Okay.

MR. MAYER: I mean, counsel can have time to say whatever he wants. I guess, again, I could dilate on the details of what was done in the patent case. I'm not suggesting that anybody ever said one way or the other definitively, in words of one syllable, that this either does or does not pertain to both pre June 1 and post June 1 infringement. I, frankly, have not combed the record for that purpose, but I'm not aware of any statement one way or the other on that subject.

THE COURT: Okay.

MR. MAYER: Okay. So I think, then, the Court understands, based on the papers, our argument from the plan provisions, our argument that the litigation conduct is certainly entirely consistent with the notion that everything is at issue pre June 1, post June 1. And to the extent the Court doesn't believe that there was a lack of a need for a

timely claim with respect to the pre June 1 because of those reasons then we can talk about 503(a), and to the extent the Court thinks it's relevant, as well, the excusable neglect rule as applicable to the patent case, again, I think, the considerations on that front are laid out in the papers and are relatively straightforward in the sense that what you have, really, is continuing -- as to the patent claim we say a continuing course of conduct started with events pre June 1. Started with, in fact, this lawsuit by Delphi to obtain certain drawings, which, as I understand it, and I just got involved with this very recently, and I'm no patent lawyer, but as I understand it all of that related to, and I think there's record evidence about this in the Walsh declaration related to a desire to move forward with resourcing or insourcing the relevant designs. And I think, in other words, that it's highly germane to the dispute over who has a patent and who's infringing on what, if anybody.

So that all began with Delphi's own choice of bringing a suit in Michigan in order to obtain those drawings and that going forward from there you're talking about the litigation that we just alluded to, in which everybody has been proceeding full speed ahead on the premise that there's no need to peel off some stub for the pre June 1 period, and everybody's been acting on the notion that it's all one ball of wax.

THE COURT: Well, I guess that's the question I have.

How did that lead to the proof of claim being filed when it was filed? I mean, even though people have been acting like it was one ball of wax, Methode, for some reason, filed a proof of claim anyway.

MR. MAYER: That's true.

THE COURT: I guess the problem I'm having here is even if you apply a for cause standard that doesn't take into account the Pioneer excusable neglect analysis, what's the cause? I mean, what was different in November that didn't exist in July as far as filing the claim?

MR. MAYER: Well, I guess, here's where there is a certain amount of intertwining. I mean, just to go back to what I said before, the whole litigation extravaganza began with a lawsuit to get drawings, and that's not about breaches of contract, per se, by Delphi. My point is there's -- when the contract was terminated, okay, and then there's an effort to go an insource the parts, we're talking about a significant overlap and intertwining of the conduct that's relevant on the patent side and the conduct that's relevant on the contract side.

So, obviously, the operative event here that's relevant is Delphi saying we're out of here. We're terminating the contract formally, definitively. We're not going to order any more parts from you. We're done in August. And why were they doing that? Well, they're doing that because, obviously,

they're dealing with Marion or they're dealing with other people to either make themselves or to procure the parts in some other way, which gives rise to the patent issues as well.

So my point is that they're --

THE COURT: But when you say --

MR. MAYER: -- intertwined --

THE COURT: When you say August --

MR. MAYER: Excuse me.

THE COURT: -- you mean August of what year?

MR. MAYER: August of 2009.

THE COURT: But the patent action was filed in April of 2009.

MR. MAYER: Yes.

THE COURT: So that can't be right.

MR. MAYER: I'm sorry. Can't be right that --

THE COURT: It can't be right that a breach in August of 2009 is really the precipitating event of the patent claim, when the patent claim was filed three months before.

MR. MAYER: I thought Your Honor was asking -- I may have misunderstood Your Honor's question. I thought Your Honor was asking why was the proof of claim filed when it was filed. I thought that was the question.

THE COURT: Okay.

MR. MAYER: And that's --

THE COURT: Yes. Oh, I see.

MR. MAYER: -- what I was attempting to answer without being the lawyer who filed it or --

THE COURT: Oh, I see. What you're saying is that it was the termination of the contract that precipitated the filing of proof of claim?

MR. MAYER: I mean, that was the event in the world that changed things in a decisive way, as we've already talked about.

THE COURT: But why -- what is -- well, how is --

MR. MAYER: At that point they're not ordering from us anymore. They're off doing what they're doing. And that's what is also implicated on the patent side.

Again, my personal view, Your Honor, is this gets very much to -- for me to give you a crisper and more effective answer gets very much into the merits of all this patent issue.

THE COURT: No, but, again, the issue I have is what is the cause to relieve Methode of not having to have filed in July as opposed to in November?

MR. MAYER: I guess, my bottom line is it's a continuous course of infringement, a continuous course of litigation about infringement. And that's putting to one side the plan framework, which even if the Court were to find no, no, you're misreading the plan, you're wrong, there's not this alternative route, it's still, even if not fully operative, something that could be taken into consideration in thinking

about whether there's cause or not, the notion that there was an alternate route and that everybody was following it.

THE COURT: I don't see any suggestion in the record that someone actually looked at the plan and said oh, no, I don't have to file a proof of claim for an admin expense because the plan says that the parties can choose their forum. There's nothing in the record that suggests that, right?

MR. MAYER: I do not know of anything in the record that suggests that.

THE COURT: All right.

MR. MAYER: That is right.

THE COURT: Okay. So, again, I'm still having a hard time seeing what was the cause for the delay. I understand now, and I understand your answer now, that the precipitating event may have been a breach, a termination, an actual termination as opposed to an anticipatory termination, although the claim didn't say the actual termination. It attached the complaint. But I guess I don't understand, given that the claim attached the complaint, a complaint had been prepared, why that didn't, you know, why the bar date notice didn't set off the light bulb then?

MR. MAYER: You know, I hear Your Honor's point. I just -- I can only stand on what it said.

THE COURT: Okay. All right.

MR. MAYER: Okay. Let's see if there's anything else

on this before we talk about forum a little bit.

THE COURT: That's fine. On the contract claim.

MR. MAYER: Yes. I mean, on the --

THE COURT: Tell me first, what has happened in the state court litigation so far? Working backwards, I know that there has been litigation in the state court over whether the plan injunction applies.

MR. MAYER: Yes.

THE COURT: But what has happened in the underlying case besides that?

MR. MAYER: Well, I can tell you a little bit. Ms. Walsh can tell you a lot more if you want to know details.

THE COURT: Either one. I just, we didn't, sort of know the status of the case. How familiar has the judge become with the facts and --

MR. MAYER: I'd let Ms. Walsh address that. I think the judge is familiar, because there was preliminary injunction practice with evidence, but she can explain it better.

THE COURT: Okay.

MS. WALSH: Thank you, Your Honor. We, in fact, have spent a significant amount of time in Michigan State Court in Oakland County. Both sides have produced thousands of, probably hundreds of thousands of pages of documents. We have had a trial date set three times, the most recent of which was the matter is set for trial in July of 2010, but we had two

prior trial dates. This is the rocket docket, so the case moves very quickly. We've had two motions for preliminary injunction heavily briefed and argued. We've had briefing and oral argument --

THE COURT: I'm sorry? Two motions.

MS. WALSH: Delphi moved for a preliminary injunction and we moved for a preliminary injunction or a TRO.

THE COURT: But your motion, then, was on the merits, right, to stop on a breach?

MS. WALSH: Right.

THE COURT: Okay.

MS. WALSH: And they moved to --

THE COURT: Enforce --

MS. WALSH: -- require us to turn over the --

THE COURT: -- the plan order.

MS. WALSH: -- Tulane (ph.) drawings.

THE COURT: Oh, okay.

MS. WALSH: Which the Court denied.

THE COURT: All right.

MS. WALSH: So we've had extensive written discovery. Interrogatories, requests for production, requests to admit. We've had our oral argument about a protective order. We have probably been in front of the Court at least ten times. She is intimately familiar with the facts. We have probably spent no less than probably ten hours or eleven hours, twelve, something

like that, with her law clerk arguing all these motions, and, then, time in front of the Court ultimately arguing all of these motions. So we have had frequent visits to Detroit in front of the Court. She's intimately familiar with the facts. And I would point out that Oakland County, Michigan is the jurisdiction in the United States in which almost all automotive contractual disputes are decided and determined. That courthouse is very familiar with automotive litigations. Most OEMs have a choice of venue provision, as did Delphi, which required suit to be brought in Oakland County, Michigan or in federal court in Michigan. So Detroit, Oakland County, the federal court in Michigan, is uniquely suited to hear contract disputes.

This matter also gets into questions of just-in-time manufacturing, automotive supply contracts, all those types of things that in some ways are unique to the auto industry, which, of course, is particularly suited to be heard in Oakland County, Michigan.

THE COURT: Has -- I --

MS. WALSH: So, yes, Your Honor, we have spent a lot of time in Oakland, because we were moving towards trial at the time that Delphi raised this motion.

THE COURT: I'm -- maybe I didn't hear you. Is there -- has discovery been completed at this point?

MS. WALSH: No, Your Honor, it has not been completed.

Delphi filed -- after the first bar date and after the plan confirmation date, had filed a motion to compel against us, and we had filed one against them. So we were in discovery disputes, but it is -- discovery was not closed.

THE COURT: So when -- is there a discovery cutoff date in the case?

MS. WALSH: There -- I believe so, and I think it's probably past now since we spent -- we've been arguing this bankruptcy issue since December 4th of '09. But I'm sorry, Your Honor, I don't know that date off the top of my head. I do know we had a July 2010 trial date. We had previously had a November 2009 trial date and one somewhere in the middle.

So we have spent a lot of time in Michigan. And the judge is intimately familiar with the facts, and every time we go before her she says I know what you're talking about, you've explained it to me before, let's cut to the chase. So she's certainly familiar with it.

Discovery closes March 23rd of 2010, but it's been stayed. She stayed the matter. She said until this Court permits her --

THE COURT: And when was that stay issued?

MS. WALSH: December was the ruling. January.

MR. MAYER: Yeah, January of this year, Your Honor.

THE COURT: All right.

MS. WALSH: We needed a clarification of the order.

She ruled on the motion in February of 2010. We went back in to just clarify that it wasn't an outright dismissal, Delphi stipulated to that, and we presented a stipulation to the Court that the case is not dismissed, it is just stayed --

THE COURT: Okay.

MS. WALSH: -- and that was on March 17th of 2010.

THE COURT: Okay.

MR. MAYER: Yes, Your Honor, I'm sorry, I did misspeak. It was indeed in February. That's in the Walsh declaration.

THE COURT: Okay.

MR. MAYER: I don't know if the Court has any more questions about the specifics. I just would just kind of go back --

THE COURT: Yeah, that's helpful, thank you.

MR. MAYER: -- go back to first principles here with respect to forum, that what everyone may think about the argument that the plan provisions excuse from a time bar, the plan provisions I think strongly support the notion that the forum doesn't have to be this court if the parties choose otherwise. And there is a forum selection clause here which, as the Court has seen from the briefing, has been heavily relied upon by Delphi for Michigan to be the appropriate forum.

THE COURT: I'm sorry, Delphi --

MR. MAYER: Delphi has invoked the forum selection

clause, because you'll recall first of all, as I mentioned, Delphi sued in Michigan --

THE COURT: Right.

MR. MAYER: -- on the contract side. On the patent side, which I think is nonetheless relevant here because it shows what Delphi thinks about the clause, they actually made a motion to transfer from the Northern District of Illinois Federal Court the patent case, and insisted that this is a Michigan-based dispute that belongs in Michigan, and the forum selection clause, which is, they say and was accepted by the federal judge in Chicago, exclusively Michigan jurisdiction to hear disputes under the contract, that that should be applied. It was applied so that that the patent case was transferred on that basis.

So I would -- again, I would invoke the forum selection clause, which I think is fully operative, as a critical reason why the case belongs in Michigan, even if the judge weren't as familiar as she is with it and as much hadn't gone on as has gone on.

THE COURT: Okay.

All right. Do you have anything more to say on that issue, then?

MR. MAYER: I don't think so, Your Honor. You understand --

THE COURT: You may after you hear Mr. Meisler.

MR. MAYER: No, you understand the --

THE COURT: Okay.

MR. MAYER: -- the contentions. Thank you.

THE COURT: Okay.

MR. MEISLER: Your Honor, with respect to the forum selection clause, which is where I'll start, Your Honor, I think the case law actually is pretty clear that there's a policy argument that Courts wants to centralize especially core matters in a bankruptcy court. And --

THE COURT: I understand that, but on the other hand the lawsuit started in Michigan.

MR. MEISLER: That's true, Your Honor, and it --

THE COURT: There was the cross-claim -- I mean the counterclaim, excuse me.

MR. MEISLER: That's correct. And at the time that the suit started, as you will recall, and it was unfortunate, but we were stuck in the Chapter 11; we didn't know at what point we were going to emerge from Chapter 11. And it was a post-petition issue. And I think on that point the law is also clear that with respect to post-petition issues it is appropriate to file those actions in a local court as opposed to bringing those breach-of-contract issues into the bankruptcy court.

THE COURT: Right.

MR. MEISLER: And so yes, Your Honor, we did file the

action in -- the contract-related action in the state court of Michigan.

THE COURT: I guess my -- where I'm leaning on this is that, leaving aside the plan provision, given the status of the litigation, how it commenced and how it's proceeded, shouldn't I just lift the injunction? I mean, at this point you have a court that's relatively familiar with the matter; the parties have been litigating there for quite a while. The claim has to be liquidated one way or the other. I just don't see particularly why, you know, we should start from scratch here. We wouldn't start from scratch, obviously, because you would have the discovery that you have. But on the other hand, what's to be served by moving it?

MR. MEISLER: Your Honor, I think you raise a very interesting question, and I think there's really two points of distinction. The first point of distinction is that what's been litigated is the anticipatory breach claim. That claim, I think, Your Honor, you'll find that that's barred, that's pre-June 1 conduct.

THE COURT: Okay.

MR. MEISLER: And so while the judge in the state court of Michigan may be familiar with certain of the facts, she has been focusing on anticipatory breach.

THE COURT: Well, I understand that, but on the other hand it seemed to me the best argument you had for keeping --

for -- not keeping -- for moving the claim dispute here is that it involves the interpretation of my own orders.

MR. MEISLER: That's correct, Your Honor.

THE COURT: But I think we just cleared that away at the start of the hearing. And so, you know, I guess you still have your issues in the -- that aren't claim issues, and you have your objection to their breach claim. They're pretty closely entwined. I understand that under the Second Circuit law the admin claim is a core issue, but it's entwined with your issue, which he's already heard preliminary injunction issues on. It just -- I -- given that we've cleared away the underbrush of my orders, I'm just grasping at why -- or wondering why -- you know, what the point of bringing it here is at this point.

MR. MEISLER: And I understand, Your Honor. I think what you'll find, however, is that there has been discovery done. That discovery was done late in the process; in fact, that was done after Delphi emerged from Chapter 11. Over 100,000 pages of documents were produced. But it's all related to this pre-June 1 conduct. And, Your Honor, I think that this Court is equally familiar, if not more familiar, with Delphi's terms and conditions. And the gist of their argument is that those terms and conditions, paragraph 11, doesn't apply because Delphi entered into the contract in bad faith. Well, that whole bad-faith argument, which is largely what the discovery

was based upon, is no longer appropriate to the adjudication of the breach claim.

THE COURT: Okay. I mean, if this were a simple lift-stay matter, though, wouldn't Sonnax say you lift the stay?

MR. MEISLER: Your Honor, I don't think they would satisfy the Sonnax factors. I think that what has gone on in the state court is largely discovery disputes, and I think that this Court has similar familiarity with the terms and conditions with Delphi --

THE COURT: Is there even an objection to their claim here pending?

MR. MEISLER: There is, Your Honor.

THE COURT: Other than on timeliness?

MR. MEISLER: There is, Your Honor.

THE COURT: I guess that's right. It did -- in the omnibus objection, it did raise that.

MR. MEISLER: That's correct, and we reserved on the merits.

THE COURT: Right. Well, I did not get a sense -- maybe I'm missing this -- that Methode is contending at this point that DPH is forum shopping. Is -- I mean, I didn't get the -- you haven't alleged, for example, that something bad has happened for DPH in the Michigan action and therefore they've changed their mind about where they want -- I didn't see that as a suggestion.

MR. MAYER: Your Honor, it is correct that we did not identify a precipitating event in terms of a forum change, other than debtors' obvious desire, as we would --

THE COURT: Right.

MR. MAYER: -- always be happy to be in front of an intelligent jurist here. But --

THE COURT: No, but I think -- I mean, I think -- again, as I read their objection to your motion, a significant part of it was bound up in the notion that they thought you were trying to sidestep the bar date issue by arguing that this litigation's fine to go ahead in Michigan and that I would -- I'm uniquely situated to interpret my own orders on that. But I think we dealt with that issue.

MR. MAYER: Yeah, your orders are essentially out of the case, I think --

THE COURT: Yeah.

MR. MAYER: -- so to speak.

THE COURT: Okay.

MR. MAYER: That's my understanding.

THE COURT: Well, because they control.

MR. MAYER: Right.

THE COURT: Right.

MR. MAYER: In other words, it's not a dispute that we have to --

THE COURT: Right.

MR. MAYER: -- bring to you on that subject.

THE COURT: Okay.

MR. MEISLER: And, Your Honor, I do have some concern as to the application or interpretation of your orders as to the facts that are going to be at issue in these claims.

THE COURT: Well, but, again, then you can come back to me. If someone's violating my order and the stipulation that was set forth out on the record today, then that's easy enough to remedy, I think.

MR. MEISLER: Although I don't think it'll be as crystal clear as a violation of the order. I think it's going to be --

THE COURT: Well, but there's --

MR. MEISLER: -- interpretation.

THE COURT: -- judicial estoppel.

MR. MEISLER: Your Honor, I agree. I think it's more efficient to handle it here in this court. With our claims procedures, we can be --

THE COURT: Well, let me ask you that. Why is that the case? I guess that's the last issue I'd want to decide here. Why isn't it more efficient to handle it in Michigan given that the parties are there, that you have your own claim, which is the precipitating claim?

MR. MEISLER: Your Honor, in fact, the claim for breach hasn't even been filed in the state court of Michigan.

THE COURT: Well -- but we'd be bringing back your -- is it -- here's a question for you, I guess: Is it a compulsory counterclaim, under Michigan procedure, to their claim?

MR. MAYER: Your Honor, we think it's either compul -- we're not Michigan lawyers. We think it's either compulsory or the next closest thing to it in a state that may not have the same rules about compulsory counterclaims as the Federal Rules. We certainly think we have no choice but to bring it. And it's, you know, the same set of facts in terms of, kind of, a common nucleus, that sort of analysis in terms of compulsory counterclaim.

MR. MEISLER: Your Honor, I dispute that. While I'm by no means an expert in compulsory counterclaim, but the action that we filed was a breach of contract because they didn't turn over the drawings. So I'm not seeing how this is a compulsory counterclaim.

THE COURT: Well, I guess it's tied to your right to terminate and your rights once you terminate.

MR. MEISLER: Those are counterclaims that were filed against our action for turnover.

THE COURT: No, I understand that what we're talking about is a to-be-filed counterclaim --

MR. MEISLER: Correct, Your Honor.

THE COURT: -- to your action.

MR. MEISLER: Correct, Your Honor. In addition, Your Honor, we have procedures in these cases where within sixty-five days we can adjudicate -- we can go from beginning to end of a claim. We've already been in the state court of Michigan for months, and we just finished the discovery process.

THE COURT: Well, I guess that's the other que -- what is the -- I mean, what is the reserve for this claim?

MR. MEISLER: Your Honor, there is no reserve for this claim.

THE COURT: There is no reserve. I mean, is it still a forty million dollar claim? I mean --

MR. MAYER: It's -- yeah, I'm not prepared to say that, Your Honor.

THE COURT: Okay.

MR. MAYER: Just some unliquidated number at this point in time.

THE COURT: I mean, in a way, the -- because there's no reserve, the timeliness issue is more their problem than yours.

MR. MEISLER: That's correct, Your Honor. And let me clarify for a moment. We have reserved approximately 700,000 dollars for the termination for --

THE COURT: Well, that's why I was asking about the forty million versus the --

MR. MEISLER: Yes.

THE COURT: Because I know you reserved around 700 --

MR. MEISLER: And we're prepared, and Methode knows this, but we're prepared to settle that claim. We do acknowledge that there is a claim for --

THE COURT: Termination.

MR. MEISLER: -- termination for convenience.

THE COURT: Right.

MR. MEISLER: But what we have reserved is something between 600,000 and 750,000 dollars, nothing near that 40 million dollar figure.

THE COURT: Well, it seems to me that this litigation in Michigan right now is going to proceed only on your claim, because there really isn't any other claim at this point. So I guess you could initiate -- or pursue the claim objection here. But it seems to me that if they amend their claim, it probably makes sense to have the whole thing continue in Michigan. It seems to me there will probably be some common issues. And unless you're going to move your litigation here, which doesn't -- which I don't think you're seeking to do --

MR. MEISLER: Your Honor, I would confer with my client, but we would be willing to withdraw our litigation, withdraw our complaint, so that we don't even have to deal with our issues.

THE COURT: All right.

MR. MEISLER: At this point --

THE COURT: Well, look --

MR. MEISLER: -- we no longer need those drawings.

THE COURT: -- as far as this matter before me is concerned, on the contract claim, it seems to me that, despite the hour we spent on this, that it's really premature for me to rule on this motion since the claim we're talking about now isn't the claim that would be in the litigation.

MR. MAYER: I mean, the difficulty with that, Your Honor, of course is --

THE COURT: You would want relief from the injunction to file a claim.

MR. MAYER: -- we can't do anything, yeah.

THE COURT: Well --

MR. MEISLER: And, Your Honor --

THE COURT: -- you could ask for permission to file that claim, I guess. It's what we're talking about.

MR. MAYER: Okay.

THE COURT: And maybe in that context, DPH can rethink its position as to whether, now that the record is clear as to what that claim is, whether it really wants to fight having the injunction being lifted.

MR. MAYER: Certainly I would ask the Court for permission. We would --

THE COURT: All right.

MR. MAYER: -- in fact, file it pretty promptly. I

think it's --

THE COURT: All right, I think that's how we should deal with it.

MR. MAYER: -- pretty close to being ready.

THE COURT: I mean, you could certainly tell where I'm leaning. And it's not based on an interpretation of the plan; it's really based on what I would apply by analogy, which is the Sonnax factors as applied to this stay in the plan confirmation order and in particular my sense, particularly after the injunction litigation, that the state court is very familiar with your claims and Methode's defenses to them, and that that's the main action in this litigation, and that this breach claim is kind of an add-on -- in fact, it's not even added on yet -- and that rather than have the breach claim control the litigation, the litigation's pretty much controlled by what the debtors initiated and which -- in what I think is properly in Michigan.

MR. MEISLER: Your Honor --

THE COURT: But that's just a preliminary thought, because, again, based upon the first half hour or so of this hearing, I think the actual context of this motion no longer applies, because we're really talking about a claim that isn't before the Michigan Court yet, and there's not really leave to file that type of claim in the Michigan Court. I could understand why I might grant such a motion, particularly if I

can see that it is like a compulsory counterclaim, or close to it, under Michigan procedure, but that's all about I can do in this context.

MR. MEISLER: Thank you, Your Honor. I'll be looking for --

THE COURT: And, you know, I think that that would be a basis clearly -- if the debtor's worried about enforcing what was set forth on the record at the beginning of this hearing, that's clearly a basis for judicial estoppel. I mean, I -- Methode prevails on its motion to let the thing go forward in Michigan on the basis that we're dealing with a post-bar date breach.

MR. MEISLER: And, Your Honor, for clarity, I -- at least my understanding of what our next steps are is that counsel for Method would provide a form of complaint and would -- we would either stipulate to lift the plan injunction --

THE COURT: Right.

MR. MEISLER: -- or otherwise we'd be back before Your Honor --

THE COURT: Right.

MR. MEISLER: -- on a motion to lift the plan injunction.

THE COURT: That's how I would conceive of it.

MR. MEISLER: Okay.

THE COURT: Yeah. And, again, since the only reason I would have had the litigation proceed here is because it would involve my orders and the bar date and the like; and now that's out, I think that you would come back to me, if somehow it crept back in again, to enforce that stipulation.

MR. MEISLER: Thank you, Your Honor.

THE COURT: Okay. All right, now, I still have to rule on the nub or the -- or the sliver of the patent claim. Do you have anything more to add on that one?

MR. MEISLER: Your Honor, I don't. I think that the record is clear on the patent claim.

THE COURT: Okay.

All right, I have before me a motion by Methode Electronics, Inc. that, as relevant to this ruling, seeks a determination that the objection by DPH Holdings Corporation to its patent claim, on the basis that the patent claim is untimely, is not valid and should be overruled. Even that aspect of the objection should be further qualified in that DPH Holdings has confirmed that it is not DPH Holdings' position that the ongoing patent infringement claim is barred by the Court's administrative claims bar date order but rather only that portion of Methode's patent claim that asserts claims that arose -- or damages arising in respect of claims that arose prior to June 1, 2009, which was the applicable date for the claims covered by my original administrative claims bar date

order in this case.

The Court established an administrative claims bar date order in this case requiring the filing of administrative claims, with certain exceptions that do not apply here. By July 15th, 2009, the administrative claims bar date order and notice were widely circulated, and Methode does not dispute that it received such notice in a timely fashion that would have enabled it to file an administrative claim, in respect of its patent claim, before the July 15th bar date. It was aware of its patent infringement claim, because it had brought a patent infringement action in April of 2009 in the Northern District of Illinois. Nevertheless, Methode did not file its patent claim by the July 15th, 2009 administrative claims bar date. Rather, it did so on November 5th, 2009.

The courts have been clear that a bar date in a Chapter 11 case is a significant event in the case. Quote, "The bar date serves the important purpose of enabling the parties in interest to ascertain with reasonable promptness the identity of those making claims against the estate and the general amount of the claims, a necessary step in achieving the goal of successful reorganization." In re Calpine Corporation, 2007 U.S. Distr. LEXIS 86514, at pages 14 through 15 (S.D.N.Y Nov. 21, 2007), citing First Fidelity Bank, N.A. v. Hooker Investments, Inc. 937 F.2d 833, 840 (2d Cir. 1991).

In this case, the administrative claims bar date was

particularly significant given serious issues with regard to the debtors' administrative solvency and the requirement under Section 1129 of the Bankruptcy Code that a Chapter 11 plan may not be confirmed unless it pays holders of allowed administrative claims in full in cash, or in such other amounts as they agree.

The Court took testimony at the confirmation hearing with regard to the estimation of administrative claims and has previously noted in other contexts -- I'm sorry, in regard to other motions for leave to file an untimely administrative claim, the importance of the bar date and the debtors' husbanding of their cash in the confirmation process and also the post-confirmation administration of the estate.

The motion contends that the plan permitted the allowance of an administrative claim under alternative means that could sidestep the bar date, and further asserts that the debtor invoked those means by participating in the district court patent litigation and having the litigation removed.

I've reviewed the provisions of the plan and the bar date provision of the modification procedures order, and conclude that the allowance provision, or the provision dealing with allowed administrative claims in the plan, which permits the parties to agree upon an alternative treatment of the claim, does not, unless the parties affirmatively agree to such alternative treatment, permit an administrative claimant to

sidestep the requirements of the bar date provisions of the modification procedures order.

I believe that the language that the claimant here, Methode, is relying upon is more properly viewed as customary boilerplate language tracking Section 1129 of the Bankruptcy Code's provision that lets the parties provide for less than hundred percent payment of admin claims by agreement and that the bar date order did not contemplate that parties to existing litigation over admin claims in other forums would be excused from having to file their claims by the bar date, simply because the parties were pursuing that litigation together and had in their post-petition documents agreed upon a forum selection provision. If that were the case, I believe it would have been dealt with in the bar date order provisions itself.

The motion also states that the patent claim, as asserted in April in the Illinois Court, should constitute an informal proof of admin claim and therefore should be deemed to be timely filed. However, the requirements of an informal proof of claim in the Second Circuit are fairly narrowly drawn and are not satisfied here in two respects. To qualify as an informal proof of claim, a document purporting to evidence such claim must have: (1) been timely filed with the bankruptcy court and have become part of the judicial record, (2) state the existence and nature of the debt, (3) state the amount of the claim against the estate, and (4) evidence the creditor's

intent to hold a debtor liable for the debt. See Enron Creditors Recovery Corporation, 370 B.R. 90, 99 (Bankr. S.D.N.Y. 2007). Here, the complaint in the patent litigation in the district court was not filed with the bankruptcy court until the November 5 proof of claim was filed, after the July 15th bar date, and also does not state a sum certain.

The first requirement is not, again, a mere procedural gambit. The requirement to have the informal proof of claim filed with the bankruptcy court recognizes that bankruptcy cases are collective proceedings and that parties-in-interest other than the debtor, who is the party to the complaint -- to the litigation, excuse me, in the patent litigation, have the right to object to claims, and often do object to claims, and cannot do so unless the claims are filed in the case in a way that they can be made aware of. Moreover, the existence of the claim on the docket of the case also enables parties-in-interest to do their own calculation and projection of what potentially liable claims are.

Consequently, I believe that the majority view requiring the claim to be filed in the -- or the document to be filed in the bankruptcy court before it becomes an informal proof of claim is the proper one. I've ruled that way in this case already, as the debtors have noted it in their response, and have done so not only based on my own analysis but also on the analysis in In re Houbigant, Inc., 190 B.R. 185, 187

through 8 (Bankr. S.D.N.Y. 1995). Consequently, I don't believe that the claim would -- or the -- I'm sorry, the complaint as filed in the district court patent action should be treated as an informal proof of claim.

That leaves, finally, Methode's argument that it should be excused from filing its claim late under the bar date order and that its claim therefore should be deemed to be timely filed. Section 503(a) of the Bankruptcy Code provides, since 1994, quote, "An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause." Collier points out that this provision was added in 1994 to overrule cases which had held that effectively a court could not set an administrative claims bar date. And there have been relatively few cases since then dealing with the for-cause language in Section 503(a). See 4 Collier on Bankruptcy, paragraph 503.02[2] (15th Ed. 2009) at 503.10. Collier notes that the term "cause" is not a defined term in either the Code or the Rules: Quote, "So the kinds of cause sufficient to permit tardy filing of administrative expense claims is left to judicial discretion and development in determining whether cause exists. Cases construing the for-cause-shown standard of Bankruptcy Rules 3002(c)(1), 3003(c)(3) and 9006(b)(1) are relevant," close quote. Collier notes that at least one Court has applied the excusable neglect standard of Bankruptcy Rule

9006(b)(1) in this context, citing In re Gillabo (ph.), 361 B.R. 87, 91 (Bankr. N.D.N.C. 2007). The debtors point out that the Gillabo case is not the only instance of a Court applying the excusable neglect standard of Rule 9006(b) to a tardily filed claim under Rule -- I'm sorry, under Section 503(a), and in fact that not only have Judge Lifland and Judge Gropper also done so in In re Dana Corporation, 2007 WL 1577763 at page 3 (Bankr. S.D.N.Y. 2007) and In re Northwest Airlines Corp., 2010 WL 502837 at pages 1 through 2 (Bankr. S.D.N.Y. 2010), but also this Court has done so in prior instances in this very case.

It appears from my reading of those two cases, as well as my recollection of my rulings, that no one made the point that Methode is making here, that 5003(a) expressly says "for cause" and that such language may override, therefore, Bankruptcy Rule 9006(b)(1) which states that a Court, for cause shown, may extend the date by which an act is required to be done by order of the Court for cause shown only if the request is made to do so within the deadline.

I do note, however, that the cause-shown language precedes paragraph -- subparagraph (2) of 9006(b), which could therefore be read as showing that cause shown includes that the failure to act was the result of excusable neglect when the motion is made after the expiration of the specified period.

I further note that employing the excusable neglect

standard in the context of a 503(a) bar date is to my mind no logically different than applying it to a 501 or -2 claim bar date, given the importance of -- or given the fact that the bar dates are equally important in either context.

However, ultimately I believe that the issue, that is, whether I should apply a looser for-cause standard or the excusable neglect standard, as set forth in Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, 507 U.S. 380 (1993) and Midland Cogeneration Venture L.P. v. Enron Corporation (In re Enron Corporation), 419 F.3d 115, 126 (2d Cir. 2005), is ultimately moot under these circumstances; that is because I have not been able to find a valid basis for finding cause under either standard in the late filing of this proof of claim or proof of administrative expense. First, there are no notice issues. Second, there is no contention that the plan language that is now being relied upon, or was now relied upon by Methode in this motion, had been relied upon at the time of the bar date by it in failing to file a proof of claim or a proof of administrative expense. Third, there's no suggestion that Delphi lulled Methode to sleep in filing its claim. And in that regard, I believe that the facts here are materially different than the facts in the In re Eagle Bus Manufacturing case relied upon heavily by Methode, 62 F.3d 730 (5th Cir. 1995).

In terms of not only the sophistication of the parties

but also the nature of the underlying claim and the underlying litigation, and the absence of any ongoing negotiations by Delphi and, finally, the fact that, as in contrast to the Eagle Bus case, the litigation in the district court would necessarily involve Delphi for the post-bar date period in any event, so Delphi's continued participation in that litigation, unlike in the Eagle Bus case, would not have -- or should not have lulled Methode to sleep about the need of filing a claim for the pre-bar date covered period.

Finally, I don't see a basis for Methode's filing the claim in November as opposed to filing it in mid-July, as required by the bar date, given that the patent claim itself was -- the patent litigation was initiated in April of 2009, and Methode was clearly in a litigation posture with Delphi well before the date that it filed the claim and well before the bar date. In other words, a light bulb may have gone off at Methode that led it to file its claim in November 2009, but I see no rational basis as to why it should not have gone off instead before the July 15th bar date.

Therefore, it appears clear to me that the delay was well within Methode's control, which would be dispositive under the excusable neglect standard, given the other facts here, particularly as applied in the Second Circuit, under the Midland Cogeneration case.

Moreover, though, again, it appears clear to me that

the debtors' estimate of administrative expenses and the debtors' husbanding of its cash position based upon that estimate are critical in this case. This is not simply a matter of reducing recoveries to creditors, since it's clear that that doesn't really constitute prejudice under 9006(b)(1), or generally which should constitute prejudice under a for-cause analysis. But the ability to rely upon an admin claim's bar date in many respects is fundamental to the Court's ability to confirm a plan and the debtors to go effective and then implement their plan, since the plan provides that such claims, as required by law, must be paid in full, unless agreed upon by the parties.

So it seems clear to me that under either approach, and frankly I continue to lean on the excusable neglect approach as being the appropriate one, but, again, under either approach, there's not cause to deem the claim timely filed and therefore the pre-June 1, 2009 patent infringement damages or claim should be barred in this case.

So the debtors should submit an order to that effect.

MR. MAYER: Thank you, Your Honor.

THE COURT: As far as the rest of the relief that was in essence agreed to on the record, I'm happy to have the record reflect that. But if you want to have it memorialized in an order, I'm happy to do that also, which is, again, to let the -- to issue an order saying that the planned injunction

doesn't apply to the patent case insofar as it seeks damages for a post-June 1, 2009 infringement.

MR. MAYER: No, Your Honor, we're fine with so ordering on the record.

THE COURT: Okay.

MR. MAYER: Thank you.

THE COURT: Thank you.

Okay.

MR. MEISLER: Thank you, Your Honor.

THE COURT: Thank you.

MR. MEISLER: Your Honor, the ninth matter on the agenda is the substantial contribution application submitted by the IUE-CWA. Your Honor, Mr. Tom Kennedy is here, and I'm going to cede the podium over to Mr. Tom Kennedy --

THE COURT: Okay.

MR. MEISLER: -- as this is his application.

(Pause)

MR. MEISLER: Your Honor, my apologies for the sidebar.

THE COURT: It's okay.

MR. MEISLER: Mr. Kennedy and I were just talking about the exhibit binder that's been submitted --

THE COURT: Right.

MR. MEISLER: -- to chambers and that we're submitting into evidence for not just the IUE-CWA substantial contribution

application but for all the applicants. In fact, Your Honor, as you mentioned on the record at the beginning of this hearing, the deadlines for all the substantial contribution applications, for their filings with respect to the affirmative case, that deadline has passed. And the rationale, for the record, was that we didn't want any party to be advantaged or disadvantaged by being adjourned to the June 30th date.

So, Your Honor, on that account, we have the exhibit binder --

THE COURT: Okay.

MR. MEISLER: -- and --

THE COURT: Let me --

MR. MEISLER: -- and we're introducing it into evidence.

THE COURT: I have that binder. There's also -- I have a manila binder that says "Supplemental Exhibits"; I don't know what that is.

MR. MEISLER: Yes, Your Honor. Those are the confidential exhibits.

Is that correct?

THE COURT: Oh, okay. But you've been -- you two have both been --

MR. KENNEDY: I've seen no confidential exhibits, and in fact I can't imagine there would be on the substantial contribution --

THE COURT: No, the -- I don't think these are --

MR. MEISLER: Oh, these are -- Your Honor --

THE COURT: No, these are not confidential. This is voting on the plan --

MR. MEISLER: Sorry for the correction. Those are additional exhibits that we submitted this morning.

THE COURT: Oh, all right. I don't think they applied, though, to this one. This -- it may apply to the trade committee, I guess?

MR. MEISLER: That's correct.

THE COURT: All right.

MR. MEISLER: You're correct, Your Honor.

THE COURT: It's just a list of the -- who voted.

MR. KENNEDY: But --

THE COURT: Okay.

MR. KENNEDY: -- the motion turns on that. I'll respond. Yes, and, Your Honor, we had submitted an Exhibit A to our substantial contribution motion, the hourly records and the summary of the hourly records --

THE COURT: Right.

MR. KENNEDY: -- and costs that we had expended. And --

THE COURT: Right.

MR. KENNEDY: -- I'd like to think I can think quickly on my feet, but that was a lot of documents to go over in the

last thirty or forty seconds. So I'm hoping that the Court has before it the hourly records that we submitted --

THE COURT: Oh, yeah, I definitely do.

MR. KENNEDY: -- as Exhibit A.

THE COURT: I definitely do. But as far as this binder's concerned, is there any objection to these?

MR. KENNEDY: No.

THE COURT: Okay, so they're part of the record for this motion.

MR. KENNEDY: All right, Your Honor, thank you. Tom Kennedy, IUE-CWA, appearing with my partner Susan Jennik, from the firm of Kennedy, Jennik & Murray.

Our motion of course, Your Honor, is pursuant to Section 503(b)(3)(D) and (b)(4) of Title 11 of the United States Code, and Rule 2016 of the Federal Rules of Bankruptcy. We are looking for recovery of attorneys' fees and expenses during the period from January 3rd, 2006 to May 6, 2009, in which period of time it is our contention that the IUE-CWA made a substantial contribution to the successful reorganization of the debtors.

And given the response that's been filed by the debtor -- and let me note, Your Honor, again, for the record, that the agenda for this morning's hearing did not include the fact that we submitted yesterday a response to that objection.

THE COURT: I read that.

MR. KENNEDY: Yes, and I believe the debtor has acknowledged receiving a copy as well.

THE COURT: Okay.

MR. KENNEDY: I think there were four issues posed: The first is, has the IUE-CWA made a substantial contribution to the successful reorganization of the debtor; second, has the IUE-CWA waived its right to seek a substantial contribution recovery; third, can the IUE-CWA be compensated for its work in connection with the EPCA and modified EPCA; and fourth, are any of the hours for which IUE-CWA seeks compensation unreasonable or otherwise compensable?

We think that the record is manifest that the IUE has in fact made a substantial contribution. And we would note that that substantial contribution was carefully described by us in our moving papers. We did not seek reimbursement for the IUE-CWA for all of the hours that were expended on this case; rather, we narrowed it to particular areas. The first was the objection to and the settlement of the 1113/1114 motion to modify collective bargaining agreements. Ultimately, as you know, that motion was withdrawn and was replaced with agreements that were entered into. Docket number 9107 represents the approval order of the memorandum of understanding with the IUE-CWA, which affected 8,500 employees and 3,000 retirees of Delphi at that time. It resulted in substantial changes in the terms and conditions and was reached

after very difficult, lengthy and significant negotiations in which, I think it is fair to say, that the IUE played an important part in securing not only for itself but really for all of the non-UAW unions a reasonable conclusion of the issues that were facing them.

Second, we made objections to proposed management compensation plans. We noted the docket numbers, there are quite a few of them, that occurred during the period of the -- for which we seek reimbursement. And I would of course focus in that connection on the objection that was made to the EPCA management compensation plan in which the debtors sought some eighty million dollars in management compensation as a result of reorganization. And the Court, after hearing our presentation, and I think it's fair to say that the IUE-CWA played a leading role in that particular matter, reduced that by some seventy million dollars.

Now, the -- it is of course true that unions have sought and been granted substantial contribution motions in bankruptcy cases. We cited them in paragraph 12 of our submission, In re ASARCO (ph.), In re Trans World Airlines, In re Bethlehem Steel. And we think if you look at those cases and compare the role that the IUE-CWA played in this case to the role that the unions played in that case, they support the issuance of the substantial contribution award to the IUE-CWA.

THE COURT: But weren't those cases where the debtors

negotiated those agreements as part of the --

MR. KENNEDY: In most cases they were, Your Honor, that's correct, and they were being objected to by others. But in this particular case -- and I'm glad you mentioned that, because Section (g)(5) of the IUE-CWA memorandum of understanding, Docket number 9106, provides an acknowledgment that, quote, "The consideration provided by the IUE-CWA, pursuant to this Agreement and all attachments to this Agreement, constitutes a substantial contribution to Delphi's plan of reorganization, that the contribution is necessary to the success of Delphi's plan of reorganization."

So in our view, there is a negotiated agreement on the part of the debtors that there has been a substantial contribution to the IUE-CWA to the successful reorganization of this debtor. It is true that they did not agree upon an amount, but we believe the amounts that have been submitted in and of themselves are reasonable.

And I would of course note --

THE COURT: Wait, could you read the first clause of that again?

MR. KENNEDY: Sure. The parties acknowledge --

THE COURT: Not the first clause.

MR. KENNEDY: Sorry.

THE COURT: Later. But keep going.

MR. KENNEDY: "(1) The consideration provided by the

IUE-CWA, pursuant to this Agreement and all attachments to this Agreement, constitutes a substantial contribution to Delphi's plan of reorganization."

THE COURT: All right, but that doesn't reference the work that the professionals did, right? It just says the consideration under this agreement?

MR. KENNEDY: Well, but the consideration provided by the IUE included the retention of its professionals that played a leading role in the negotiations and in the court proceedings that resulted in the ultimate agreement. It is the union's contribution which was manifold in the sense that, yes, members gave up benefits and there were adjustments to wages and so forth. But there were also substantial contributions by the IUE in paying for its professionals to be part of that process.

So we think, yes, this certainly does include the participation by professionals for which we seek compensation today. There's certainly nothing in the language which excludes the participation by professionals. It simply refers to consideration provided by the IUE; the consideration included the participation by its professionals.

And we of course believe that it's noteworthy that the U.S. Trustee, after reviewing our application, has joined with us in observing that the IUE made a substantial contribution, and they focus on the objections to the various KESIP plans and the management compensation plan. Delphi -- or DPH has said

nothing that undercuts the voice of the U.S. Trustee's conclusion that in this case there has been a substantial contribution.

Now, I wanted to address the waiver argument, because I think that has two elements that --

THE COURT: Well, before going to that --

MR. KENNEDY: Sure.

THE COURT: -- on the substantial contribution point, I ruled in the union's favor on the exit bonus plan, but there were a number of other objections by the union to various executive bonus plans. And I was -- in looking at the time records attached to the application, they cover a period that's -- that goes beyond that litigation where I ruled in your favor, right? They cover objections too?

MR. KENNEDY: They cover two types of compensation objections: one, the continuing KESIP disagreements that the union had; and second, the management compensation plan issue that resulted in a seventy million dollar reduction.

THE COURT: Right, but on the KESIP ones, I guess -- what was the benefit to the estate on that?

MR. KENNEDY: Well, Your Honor, it was twofold. The existence of the unions as effective watchdogs in the KESIP process resulted in changes in the amounts that would -- the EBITDAR would have to be increased in order to justify a bonus to the executives, and, as I remember correctly, resulted --

since it was originally presented with the approval at the time of the creditors' committee, as a sliding scale, and Your Honor, as a result of the union objections, moved it to a binary system, they either made the judgment -- they made the amount or they didn't. There were consistent negotiations in each quarter as to what the allowable targets would be. I remember Your Honor asked the question, Was it going to be a lay-up or was it -- require a reach by management.

THE COURT: Right.

MR. KENNEDY: And in each case for those systems, ultimately we did not continue to object each quarter, because Your Honor had made it pretty clear what your rulings are going to be. But for a number of the quarters, we did object. I guess they're actually typically done twice a year in order to ensure that the management standards were significant, that they were a reach and not a lay-up. And we addressed in each case the amount of money that would have to be earned as an EBITDAR in order to qualify.

So in our view, that was a substantial contribution in each case. Typically those were -- they had the effect of policing the process in a way that no one else was doing.

THE COURT: Well, I guess that's my next question. The committee was involved in that process as well, right?

MR. KENNEDY: Yes.

THE COURT: So --

MR. KENNEDY: Well, that brings up an interesting point, Your Honor. In our view, a committee composed, as it necessarily is, of bankruptcy lawyers and management officials, takes a relatively generous view, at least from our perspective, of how management compensation should work. And there were -- well, I'm not in a position to reveal conversations in the committee, but I will say that the committee, I believe, was even publicly aware that the unions would be mounting separate challenges, and frequently left to the unions the articulation of specific objections to the management compensation plans.

THE COURT: But how do I know, given the committee's involvement, what portion of this -- and I'm leaving aside for the moment the bonus, you know, the eighty-two million bonus -- how much of the modifications on the KESIP targets is attributable to the union as opposed to the committee?

MR. KENNEDY: I think it's difficult to make a specification of that amount, Your Honor. I believe that the track record of this case, in which it was the unions that consistently tried to hold management accountable for the compensation schemes they were presenting, is a benefit to the estate even without being able to ascertain which dollar moved where as a result of that persistent review.

THE COURT: Okay. And --

MR. KENNEDY: With respect to the waiver arguments --

THE COURT: No, sorry.

MR. KENNEDY: All right.

THE COURT: Sorry. On the substantial contribution, if the union had a unique role on the KESIP targets, that was a role that the estate clearly benefited from, because those targets were set on an ongoing basis and the cash that was paid and the cash that wasn't paid because of the input by the union and the committee was real cash. On the incentive -- the exit payments, the debtors make the point that even the amount that I approved wasn't paid because of the turn of events in the auto industry and in Delphi in particular. So that therefore even though there was a lot of litigation over this, and you obtained a result that in that instance I can see clearly you obtained as opposed to the committee, I'm having a hard time seeing ultimately how the state benefited from it.

MR. KENNEDY: Well, I think, Your Honor, as the ultimate plan of reorganization was worked out, had -- and of course there's some element of speculation in this; it's impossible to have the conversation without acknowledging that. But had the plan continued as it had originally been structured in the EPCA, with a more than eighty million dollar management bonus, in our view there was a much greater likelihood that management would have continued to fight for some amount of bonus in the subsequent plan that was ultimately approved. The -- having taken that off the table, it became much easier

for the ultimate plan to not reflect an amount of management compensation.

And I also think, although it is true that substantial contribution motions are backward-looking in nature in the sense that they evaluate at the end of the day what the impact was, there is also an element in this case of looking at the time at which the services were rendered: Were they reasonable, and did they provide a benefit?

And, in my view, the -- had the management compensation plan, as drafted, been allowed to continue in which all of the other stakeholders in the Delphi case, including the employees and both union and salaried, been aware that this small group of upper officials were going to get this terrific bonus, it would have impacted on the administration of the estate and the estate's ability to continue to manufacture products effectively, on time and in a quality way.

But achieving, as we did, a leveling of the field during the period from Your Honor's ruling through the point that the matter went out of bankruptcy, in which Delphi continued to produce domestically, continued to have a salaried and a unionized workforce, that that was an advantage in and of itself to the estate to having taken out what would have been an irritant in relationships between the non-compensated individuals and the management folks that would have participated in that eighty million dollar pool.

So I don't think, from a backward-looking point of view, you can ignore the ongoing value to the estate of preventing what would have been seen, we believe, by participants as a grab by management that would have thwarted continued sacrifices that were necessary to ultimately reorganize this debtor.

THE COURT: Okay.

MR. KENNEDY: The way the claims -- I just want to touch on briefly, Your Honor, the --

THE COURT: I'm sorry, I'm still --

MR. KENNEDY: Okay.

THE COURT: In your time records, on the category on the KESIP/management compensation plan --

MR. KENNEDY: Yes.

THE COURT: -- there's -- there are references to an AIP as well. Is the AIP something other than management compensation?

MR. KENNEDY: No, the AIP is, I believe, another acronym for KESIP.

THE COURT: Okay. Okay.

MR. KENNEDY: I think it's annual incentive plan.

THE COURT: All right. And --

MR. KENNEDY: I believe that, as originally presented, the KESIP -- it may have been the annual incentive plan was for the upper officers, I'm sort of --

THE COURT: Right.

MR. KENNEDY: -- remembering, Your Honor.

THE COURT: And then there's also a number of references to the EPCA objection motion, in addition to references to the MCP, which was the bonus plan, the eighty-two million bonus plan. And I don't understand the references to the EPCA motion. It's about -- it's several pages in. But they're from December, 2007 and January of 2008.

MR. KENNEDY: Well, we had made an objection to the EPCA motion which primarily focused on the management compensation plan. But as I remember correctly, also it concluded requirements that the labor contracts be assumed in any subsequent -- by any subsequent purchaser or by the reorganized Delphi.

THE COURT: Right.

MR. KENNEDY: And we consider that to be reasonable and appropriate to the estate to clarify that these contracts, especially for the non-UAW unions, would be ultimately carried forward, and that is a role that in fact we played.

THE COURT: No, I understand you guys did that. I'm just -- I didn't see how it related -- it was in the category of the management bonuses, for example.

MR. KENNEDY: Well, it should have more properly been probably allocated to objections to the plan, then, Your Honor.

THE COURT: Okay. All right. Okay, so now you could

get to the waiver.

MR. KENNEDY: Thank you.

THE COURT: Okay.

MR. KENNEDY: The -- there's two waiver arguments; the first is that the MOU, which is the 9106 docket number, that the IUE-CWA entered into constitutes a release of the opportunity for a substantial contribution motion, because the MOU states at section 8.3, quote, "IUE-CWA waives and releases any and all claims arising directly or indirectly from or in any way related to any obligations under the collective bargaining agreements."

We think it's absolutely clear that this motion is not arising under the collective bargaining agreements. It's not even related to the collective bargaining agreements. It's arising under the Bankruptcy Code and the rules of the bankruptcy court.

And, again, we would note that because there's a reference to the IUE-CWA having made a substantial contribution to the successful reorganization of the estate in the same document that they're claiming constitutes a waiver, we simply don't think there's any basis for that contention at all.

They also argue that the -- granting a substantial contribution motion would in effect modify the collective bargaining agreements, and again we think that's specious. The collective bargaining agreements are in place with the new

Delphi. DPH Holdings does not have a collective bargaining contract with the IUE-CWA or any other union, to my knowledge. Modifi -- granting the substantial contribution would not work a modification or effect in any way the existing collective bargaining agreements.

The third point of waiver they argue is that the -- and this is the last point I make, Your Honor. They argue that the agreement under which Chanin was retained constitutes a limit on a substantial contribution motion, because the retention order provides, quote, "Any advisor fees paid by the Debtor shall be applied against and considered part of any distribution in respect to any resolution of any claims the unions may have against the Debtors in these Chapter 11 cases, whether by settlement agreement or judgment of this Court."

And that, Your Honor, because that order doesn't preclude IUE-CWA from seeking reimbursement for the claims -- or I should say, for the fees paid to Chanin, even though they were paid by the debtor, we view that as a zero-sum game. We are not seeking recovery of the fees that were already paid to Chanin; it wouldn't be particularly sensible to do that. I doubt that Your Honor would grant it; it would hardly be fair. But that is what that language refers to. There's no waiver of our right to obtain professional fees other than those that were paid to Chanin as a result of that order.

The next point raised by the debtors is that the EPCA

and modified EPCA were not approved, and Your Honor's already touched on that in our exchange. And in our view, that doesn't limit the ability of the IUE-CWA to obtain reimbursement of its fees in connection with its opposition to those agreements. The IUE played a leading role in doing that. The process of obtaining fairer EPCAs and modified EPCAs were important for the estate, important for allowing Delphi to continue to operate and ultimately to reorganize.

The -- Delphi also objected, somewhat randomly we think, to 864,000 dollars of the compensation that IUE-CWA sought. And we took a look at those, Your Honor. There are 367 time entries which the debtor asserted were non-compensable. Eighty percent of those were for either discovery and document review or for attendance at a preparation for a hearing. If an entity has made a substantial contribution and it's seeking recovery of its legal fees, the notion that you could prevent recovery for discovery or document review or preparing and attending a hearing, on its face, is silly.

The -- in many of the motions that we made, Your Honor, we would be presented with hundreds of thousands of pages of documents. Actually, I think Skadden was pretty cooperative in many instances and not simply opening the floodgates. But even on a reasonable estimation of what could be responsive to the discovery demands we made, we had to work twenty-four hour days, and quite a few of them, in order to

prepare ourselves for these hearings. The hearings were important, they resulted in significant advantages to the estate, and it was a necessary element of those that we go through that discovery document review and that we attend the hearings and of course prepare for the hearings.

We underwent a cross-examination of their expert witness in connection with the reduction of the bonus. I don't know if Your Honor recalls it, but there was a presentation by an expert witness that reviewed how he had come up with their management plans. And we were able to use, I think effectively, the e-mails that had been sent. Out of thousands, we selected some twenty or thirty, and we think they were very effective in securing a better resolution for the estate. We could not have done that without a significant amount of time on discovery and document review. And certainly attending the hearing and preparing for it were critical elements of achieving that.

So we don't think they have made significant objections. As I said, eighty percent of them are either in connection with discovery or attendance at a hearing.

The cases they cite, in our -- that they relied upon, in our view, are distinguishable. I just want to note that In re Granite, in particular, is distinguishable from the IUE-CWA application. There the Court held that a party was seeking recovery for losing an automatic stay litigation. And the

Court described it as, quote, "like maiming a person, losing the ensuing lawsuit, and then demanding kudos for clarifying the law of battery", which is an amusing way to put it, but it indicates that the level of support for the substantial contribution application in that case was well below what the IUE-CWA has been able to demonstrate. We're simply not in that position.

We did add substantial value with respect to each matter for which we're seeking recovery. Our position was either upheld by the Court or a settlement was achieved that, in our view, advantaged the estate.

I think there's also an issue raised by the debtor about whether the IUE-CWA was acting solely in its own interest. I think we present an excellent example of a litigant that, yes, had an interest; I'm not suggesting we didn't. But we pressed hard, and I think effectively, for settlements that went well beyond what the IUE-CWA certainly institutionally had as its interest. We attempted to reach a fair result so that the debtor could reorganize, notwithstanding the burden it imposed upon our members.

The IUE-CWA, as an institution, as a union, got virtually got nothing out of the long process of spending all these professional fees and being involved in each one of these confrontations. We look to --

THE COURT: I don't understand that.

MR. KENNEDY: Well, I'll give you an example. The New Brunswick plant, we negotiated a closure and a -- in a situation where there was a contractual obligation, in our view, to keep the plant open, we negotiated a closure, a severance benefit for the employees, on termination. The union, and this is not the way the union thinks but it's appropriate, I think, to mention it here, was -- had a stream of dues income from that plant for about 400 people that would have continued, according to the contract, through 2011. There's been no compensation to the union for the loss of that dues income. That dues income has been lost for approximately 6,000 active employees that were employed in 2005 when this case was filed. That is an enormous amount of money. The union neither sought nor regarded as appropriate a claim on its part that it should recover for lost dues income. I can tell you, however, that the IUE-CWA, in working on behalf of the employees and the communities they represent, and even frequently on behalf of the other unions, was doing this for more than just itself.

My point is that the union's role here was not simply as though it were --

THE COURT: But isn't that all bound up in being a union? I mean, --

MR. KENNEDY: Yes.

THE COURT: -- one of the things the union can tell

people is, yeah, we're not -- you join the union not just to pay us dues but because we'll look after you?

MR. KENNEDY: Exactly, and that's why we have never articulated that before. But I think the one --

THE COURT: Okay.

MR. KENNEDY: -- narrow corner where it makes sense to make the point is, can the union be said to be acting solely as a commercial creditor as though we were a trade entity that had a contract with them and they owed us for some widgets? That's not the point. We were acting in a broader larger scope, ignoring our individual interests, because that is what the union's supposed to do, and that is what we've done, effectively, in this case.

THE COURT: Well, are you saying, then, that a trade creditor that offers generous trade terms or is willing to waive a prepetition claim to give a debtor a break because it wants to have a continued customer is entitled to 503 also? That is, that --

MR. KENNEDY: No.

THE COURT: -- you know, the --

MR. KENNEDY: No, I'm not. I'm simply responding to a very narrow point --

THE COURT: Okay.

MR. KENNEDY: -- of whether the IUE-CWA was acting solely in its own interest in --

THE COURT: Okay.

MR. KENNEDY: -- taking the positions that it did in this case, and our answer is no, it was more broadly focused than that across the interests of our members but also the interests of the estate as a whole and the communities in which they reside.

THE COURT: Okay.

MR. KENNEDY: So for those reasons, Your Honor, we request that the compensation and expenses we've sought be granted.

THE COURT: Okay.

MR. MEISLER: Thank you, Your Honor. First and foremost, I'd like to say that Delphi does appreciate the efforts of the IUE and all the represented hourly employees. This was a difficult Chapter 11, there were a lot of sacrifices by many parties, and we appreciate the efforts that were made by the IUE and the other hourly represented employees, as well as all the employees of Delphi.

But, Your Honor, I think the IUE is uniquely situated with respect to, in particular, the drafting of the MOU. If you take a look at section (g)(5), Mr. Kennedy was singularly focused on only the first prong of the language, which cites substantial contribution, which, interestingly enough, is language that was inserted into the MOU by General Motors.

But if you take a look at the third prong of the

language in (h)(5), it says, IUE-CWA would not have made this contribution without obtaining the terms and releases provided for herein. And so, Your Honor, there was a quid pro quo, here, and while it is true, there was a benefit obtained in connection with the modifications to the collective bargaining agreement, they also got benefits. And those benefits are contained within the MOU.

THE COURT: Well, it's also a tie-in to the Metromedia case. I mean, the whole point of that language was so that there would be a basis for an injunction of protecting third parties. That language is right out of the Second Circuit's Metromedia case, which is why GM wanted it and the other third parties wanted it. It's -- you get the plan injunction when you make a substantial contribution to the case, and therefore, that justifies the issuance by the Court of an injunction. It protects you from third-party claims.

MR. MEISLER: That's correct. Thank you, Your Honor.

Your Honor, I'd also like to point to (h)(3), and that's with respect to the waiver language.

THE COURT: Which by the way, why GM wanted this to be under a plan as opposed to a sale, unlike the GM case itself, because they wanted the injunction. I'm sorry, go ahead.

MR. MEISLER: Thank you, Your Honor. With respect to the waiver language, Your Honor, we do think that it's broad enough. Mr. Kennedy would like to assert that it doesn't

explicitly state that they waived a claim under 503. But Your Honor, all these claims relate to the MOU. We wouldn't have been in the negotiating room but for the CBA.

THE COURT: Well, the claims on the bonuses don't relate to the MOU.

MR. MEISLER: Your Honor, to some degree, I agree with that. Where I disagree with that is that the reason why -- the policy reason why Mr. Kennedy was objecting to management compensation is that there was the tension between management and the hourly represented employees.

THE COURT: You want to really read "related to" very broadly to cover anything that's --

MR. MEISLER: I do, Your Honor.

THE COURT: All right.

MR. MEISLER: Your Honor --

THE COURT: It's not really -- I mean -- well, okay, go ahead.

MR. MEISLER: Your Honor, with respect to the IUE's objections to management comp, Your Honor, you're of course very familiar with the case law in your recent value opinion, and I just want to emphasize or reiterate with respect to the emergence cash, while yes, there was a contribution made, and Mr. Kennedy did prevail in that litigation, ultimately, when viewing in hindsight the result, the modified plan had no emergence cash component and wouldn't have had an emergence

cash component regardless of the litigation that was commenced by Mr. Kennedy because DPH doesn't have an employee. It has a consultant, but it doesn't have -- and that consultant has, which is Mr. John Brooks, that consultant has a management -- or, a consulting contract. But the management comp program just wouldn't come into play.

Your Honor, with respect to KESIP, KESIP was heavily negotiated between Delphi and the UCC. Your Honor, we don't see that the IUE provided a substantial contribution in connection with KESIP. We do think that what was at play, as I mentioned, was the tension between the hourly looking at the 1113 motion that was filed, in particular, and management comp programs that were being requested or sought, and of course, there was that tension between management having an incentive plan and hourly being asked to make certain concession. And so we believe the objections were self-interested. Reducing KESIP was an issue of self-interest, and therefore, under the case law, his substantial contribution application, even for the KESIP objections, shouldn't be permitted because of duplications, as mentioned, and because of self-interest.

THE COURT: What about Mr. Kennedy's point that even though the emergence bonus went by the boards, that the substantial reduction of it before it went by the boards generated some amount of good will or peace in the -- within the business, and therefore, was a demonstrable benefit?

MR. MEISLER: Your Honor, unfortunately, I would dispute that. I think that there was actually considerable adverse impact to morale on account of that ruling, and, Your Honor, I think --

THE COURT: Among the management people?

MR. MEISLER: Among management and among salaried.

THE COURT: Among salaried, too?

MR. MEISLER: Correct, Your Honor. That the emergence cash was --

THE COURT: Oh, I'm sorry, yes, of course, it would be among --

MR. MEISLER: -- fairly broad.

THE COURT: Right.

MR. MEISLER: At the same time, Your Honor, I think that the ultimate plan was so vastly different that what Mr. Kennedy objected to in connection with the plan management comp program just didn't come into play. And the economics of the business were so vastly different in 2009 than they were in late 2007 and early 2008 that it just didn't, in hindsight, provide a contribution to where we ended up at emergence.

THE COURT: Okay.

MR. MEISLER: Your Honor, finally, with respect to the offset, we think the language of the order -- it's the UAW and IUE-CWA financial advisor payment order -- is clear. And that's paragraph 4, decretal paragraph 4 of the order. We have

it at tab 2 of our exhibit binder. And what that order says is that the payments made to the financial advisors of the IUE-CWA can be used as an offset to any claims that they have. And what they're doing here is they're asserting that they have substantial contribution claims.

THE COURT: But isn't it -- but don't they offset the claim that they have for the financial advisors?

MR. MEISLER: Your Honor, that's not the way that I read it because the way that I read it is --

THE COURT: But then they would have the claim for the financial advisors.

MR. MEISLER: Your Honor, I may be misreading it, but the way that I read this order was we were authorized to pay the financial advisors.

THE COURT: Right.

MR. MEISLER: But that any subsequent claim that the IUE may have, we would be able to apply the four million dollar payment against future distributions on account of those subsequent claims. And if I can read the language, "Any advisor fees paid by the debtors shall be applied against and considered part of any distribution in respect of any resolution of any claims the unions may have against the debtors of these Chapter 11 cases."

THE COURT: But wasn't that dealt with in the subsequent MOU when you fixed the claims? I mean, unless

you're saying -- I mean, to me, this ties into your waiver argument. Unless you're saying that the MOU wasn't the last word on the claims, then doesn't it trump this earlier order because it fixes the claims?

MR. MEISLER: Your Honor, yes, if I wasn't clear, this is in the alternative, Your Honor. If you don't see our argument with respect to waiver, and you think that they do get to assert a distinct on account --

THE COURT: But, I mean, I under -- but it seems to me it doesn't work both ways, that the MOU fixes what the claims are, and that this amount that you paid in respect of the advisors is part of that claim. There's no additional -- there's no section of the MOU that says, oh, and by the way, if we have any other claims, you can offset the amount that you've paid for the advisors against that. It just says these are the claims, and this is how it will be dealt with.

MR. MEISLER: Your Honor, I agree with that. I agree with that wholeheartedly. I think, though --

THE COURT: No, but what I'm saying is, that it -- to my mind, it doesn't necessarily say that these are our 503(b) claims, too. But I think it does say that these are our claims, and so if there's any crediting, it's already credited.

MR. MEISLER: Against the claims they got in the MOU?

THE COURT: Right, right. I mean, I'm assuming that they would have negotiated more -- if they felt that there was

this credit issue out there, they would have negotiated to get that money and to have you say there's no offset.

MR. MEISLER: Right.

THE COURT: To me, it comes down to the language, is whether this waiver is really specific enough to cover this type of application.

MR. MEISLER: Understood, Your Honor.

THE COURT: And it seems to me, and maybe you can address this, Mr. Kennedy, that it probably does on the 1113 and 1114 stuff, but may not on the other stuff. Although maybe it does because the "related to" is very broad, and your argument is that the litigation over the KESIP and the emergence bonus was all tied to balancing out the -- it was all tied to the 1113 negotiations because of the shared sacrifice aspect of 1113.

MR. MEISLER: That's correct, Your Honor, and that shared sacrifice language was language that was part of the collective bargaining agreement and MOU.

Your Honor, Mr. Kennedy also -- and I know you pointed it out, but Mr. Kennedy had mentioned that the IUE got virtually nothing out of the case, and I just want to mention and rattle off the fact that they got a top off of their pensions, that they secured jobs with General Motors, that they got an attrition plan, they got a VEBA.

THE COURT: I'm assuming that the members of the

splinter unions would argue that --

MR. MEISLER: Take significant issue with --

THE COURT: -- they got a lot worse than the IEU (sic).

MR. MEISLER: That's correct, Your Honor.

THE COURT: IUE, I mean.

MR. MEISLER: Your Honor, my final point is with respect to -- with respect to the Granite Partners case and those services that, according to Judge Bernstein, can't qualify as substantial contribution. Your Honor, we simply took the standards that Judge Bernstein set forth, and he said, at page 453 of that opinion, that case administration monitoring are not compensable services. Attending hearings, conducting discovery, reviewing papers and communicating with clients --

THE COURT: Well, it depe -- I mean, it depends on the hearing. If you're just monitoring, that's right. If you're actually doing the work that's the covered work, then obviously it would be covered, right?

MR. MEISLER: Correct, Your Honor. Understood, Your Honor.

Your Honor, you know, I had one last point, and that is, to be clear with respect to the objections filed by the IUE, in particular with respect to the EPCA and the plan, 1113, and KESIP, they were one of many objectors. And so, Your

Honor, we would argue that on all fronts, they would not satisfy the prong which is that their work was not duplicative of any other party. On that note, Your Honor, I have nothing further.

THE COURT: Okay.

MR. KENNEDY: Just a couple of points, Your Honor. We don't believe it would be appropriate to use the language of the Chanin retention order as an offset against any of the elements of the compensation that IUE-CWA is seeking this morning. If the Court were to conclude that that language applied to other elements of IUE activity, we would have included a 4.5 million dollar request for reimbursement for the fees that were paid to Chanin. And the debtor would say it says right here that any recovery you make is offset by what Chanin was paid, and we'd be back down to where we are today, which is a 1.2 million dollar claim. It's a zero sum gain.

THE COURT: Well, I think -- I understand. But what Mr. Meisler was saying was that they weren't acknowledged -- that, in fact, the order acknowledged that it wasn't really a claim, that it was just an amount you were paying now, and it would be offset against whatever you owed in the future.

MR. KENNEDY: But we could have made the claim because it was a continuing --

THE COURT: I know, but he's --

MR. KENNEDY: -- obligation the IUE-CWA assumed.

THE COURT: But he's saying that the order basically says it's not a claim; that it's a gift, and that there is no right to pay Chanin -- to have Chanin paid. I think that's what you're saying.

MR. MEISLER: Correct, Your Honor. In addition, Your Honor, Chanin is not -- the substantial contribution statutory language would not cover Chanin because they're not an accountant.

THE COURT: Okay. But --

MR. KENNEDY: But they were professional fees that we obtained, and in fact, we did use them as an accountant, Your Honor, and that was much of what they --

THE COURT: All right.

MR. KENNEDY: -- provided to us. At the time of the negotiation of the MOU, we believed the language that you identified a moment ago as having been inserted by General Motors was reached between IUE-CWA and Delphi and GM as part of that MOU as an express acknowledgement that the IUE had made a substantial contribution and would be making a motion for that amount. It was reached years after -- or, a year after the Chanin order was entered. At no point in those negotiations did Delphi take the position that there could be no, or at least any --

THE COURT: It would be barred.

MR. KENNEDY: -- it would be barred or any substantial

contribution motion would be subject to the amount paid to Chanin.

THE COURT: All right.

MR. KENNEDY: The Chanin amounts were something that we requested, that the company assumed --

THE COURT: I think you win on this one.

MR. KENNEDY: Fine.

THE COURT: You don't need to --

MR. KENNEDY: Okay. With respect to the EPCA and the modified EPCA, DPH took the position that it was all part of the 1113/1114 tension, resolving the tension between employees and their managers. Let's just take a look at the timing. The MOU, which settled the collective bargaining issues, was approved by this Court in August of 2007. The EPCA and the modified EPCA were subsequent to that. You cannot argue that the activities the IUE engaged in in connection with the EPCA and the modified EPCA were an outgrowth or part of the 1113/14 proceeding. They are separate. And in fact, the company took the position, and I think correctly, that labor transformation was a critical part of the case, and they could not even propose a modified, or I should say, the ultimate EPCA -- first EPCA, then the second EPCA, until they'd already gotten in place agreements with their unions. So we'd already gone through the hotly contested litigation over the 1113/1114, negotiated a satisfactory solution to the estate -- that was

all done -- and then we went into the EPCA process in which the IUE-CWA continued to make the objections it thought were necessary for the estate.

THE COURT: But those objections, again, were what? Again, how did the estate benefit from those objections?

MR. KENNEDY: Well, first, they were part of -- the management compensation plan was part of the EPCA objections, number one, of course.

THE COURT: But that's a separate --

MR. KENNEDY: It is separate.

THE COURT: I mean, you separately accounted for that. I'm just focusing now on other than that. I'm sorry.

MR. KENNEDY: Well, other than that, we made the limited objections necessary for us to explore the EPCA, to get discovery on the EPCA, to make sure that it continued that the MOU would continue --

THE COURT: Right.

MR. KENNEDY: -- with the new employers. I think, frankly, it's a pretty small part of the compensation we're seeking.

THE COURT: Okay.

MR. KENNEDY: The last exchange between Court and counsel calls on me to comment that I think the Court has observed that we did not monitor. I've not been in this court and my partner, Ms. Jennik, has not been in the court just

randomly attending hearings. We were here when there were matters of critical labor importance. I assure you, the IUE-CWA is not prepared to pay us to hang out on financing issues and so forth that are simply not central to our purpose. Every time we attended in this court, it was because there was a matter pending that was critical to the labor transformation issues in the case, and that is the only thing for which we seek compensation.

The compensation plans were a piece of that, but we believe it was really a trilogy of events, all of which should be compensated, which is to say the 1113/1114 motions, there was no effective way with respect to any of that. The IUE played a leading role on that, and the U.S. trustee has acknowledged that. The management compensation and the EPCA plans, the role of the unions -- and the IUE-CWA was the leading union in doing this -- in objecting to these plans, kept the estate honest in terms of management compensation and gave a real benefit to this estate. A real benefit to this estate. Without that, we would have continued to have up -- unlost (ph.) and it would have been very difficult for this employer to continue, especially given the sacrifices they were making. They were asking of our employees that were staged in, you'll remember, Your Honor, that over time, from August of '07 through the rest of '07, through '08, there were staged in reductions and compensation and benefits, and for that to have

been happening while at the same time there was no effort that management was similarly experiencing some level of contribution to the pay-in would have made it very difficult for the estate to continue.

So our view, Your Honor, is that we've adequately supported the claims and that they should each be granted.

THE COURT: Okay.

MR. MEISLER: Your Honor, as a final point on the EPCA and amended EPCA in particular, we would just mention two things. One is that we don't believe that the objections to the EPCA and amended EPCA, on account of any parties, provided a substantial contribution, because ultimately, those agreements became irrelevant in hindsight. And the other thing I'd like to mention, and it's illustrated fairly clearly in Exhibit 3 to our binder, is that the objections made by the various parties were duplicative. You can see that it goes through on various grounds, and many of the stakeholders in our cases objected on the same grounds. Thank you, Your Honor.

THE COURT: Okay.

All right, I have before me a motion by the IUE-CWA under Sections 503(b)(3)(d) and (b)(4) of the Bankruptcy Code for the allowance and payment of $1,238,304.85 in connection with work done by its counsel in this Chapter 11 case on the basis that the IUE and its counsel made a substantial contribution in the case insofar as that work was done.

The debtors, now named DPH Holdings, have objected to the application. The U.S. trustee has submitted a statement in support of the application. The application, as I noted, is governed by Section 503(b)(3)(d) and (b)(4) of the Bankruptcy Code. As I recently described in In re: Bayou Group, LLC, 2010 W.L. 1416776, (Bankr. SDNY, April 5, 2010) the Court's analysis of such a motion is a two step analysis. First, the Court is to determine whether, in fact, the creditor, through its counsel, made a substantial contribution in the case, and then secondly, as set forth in 503(b)(4), whether the compensation requested by such counsel is reasonable based on the time, the nature, the extent, and the value of such services and the cost of comparable services, other than a case under this title, as well as reimbursement of actual necessary expenses incurred by such attorney.

The issue of whether a party has made a substantial contribution in a case is one that has been frequently addressed and written on by bankruptcy courts and appellate courts, and certain basic principles are clear. First, the applicant has the burden of proof by a preponderance of the evidence on both prongs of the analysis. In re: United States Lines, Inc., 103 B.R. 427, 430 (Bankr. S.D.N.Y. 1989).

Secondly, in keeping with the general rule that priorities must be narrowly construed -- and of course, this is a claim that would be entitled to a hundred cents on the dollar

payment -- in light of the presumption in bankruptcy cases that the debtor's limited resources will be equally distributed among all unsecured creditors. That also is set forth in the U.S. Lines case, but the larger principle on a narrow construction of claims for administrative expense is set forth in Howard Delivery Service v. Zurich American Insurance Company, 547 U.S. 651, 667 (2006) and by the Second Circuit in In re: Bethlehem Steel Corp., 479 F.3d 167, 172, (2d Cir. 2007). See also In re: Dana Corp., 390 B.R. 100, 108, (Bankr. S.D.N.Y. 2008) and In re: Granite Partners, L.P., 213 B.R. 440, 445, (Bankr. S.D.N.Y. 1997) in which Judge Bernstein said, "Substantial contribution provisions must be narrowly construed to, among other things, discourage mushrooming expenses and do not change the basic rule that the attorney must look to his own client for payment."

In addition to that basic rule, it also should be noted that the Code establishes other claims and priorities for such expenses, for example, of the -- as part of the unsecured claim in cases where a creditor secured the secured claim of a creditor. See 11 U.S.C. Section 506(b) which covers a secured creditor's right to legal fees and expenses from the debtor as well as Travelers Casualty and Surety Company of America v. PG&E, 549 U.S. 443, 453 (2007) and Ogle v. Fidelity & Deposit Company, 586 F.3d 143, 149 (2d Cir. 2009), in which the Second Circuit allowed a general unsecured claim for post-petition

attorneys' fees provided for in a prepetition contract. Of course, as a general unsecured claim, that claim, unlike a claim under 503(b)(3) and (b)(4), would be paid in only "tiny" bankruptcy dollars.

The courts have also been clear that mere active participation in a Chapter 11 case does not give rise to a right to be compensated under 503(b)(3) and (b)(4). Rather, the creditor must show that such participation resulted in a demonstrable, or demonstrated, direct benefit to the estate, the creditors, and in applicable instances, to stockholders. In re: McLean Industries, Inc., 88 B.R. 36, 38-39 (Bankr. S.D.N.Y., 1988) and In re: Alert Holdings, Inc., 157 B.R. 753, 757 (Bankr. S.D.N.Y., 1993) in which the Court stated that extraordinary action must lead to direct, tangible benefits to creditors for Section 503(b)(3)(D) claims to be allowed. This requirement for a direct benefit is stated in various ways in the cases. But what comes through clearly is that the benefit to the estate must not only be a net benefit and material and concrete, but also needs to be a benefit demonstrably for the estate as a whole, as opposed to something that goes to the creditor and, indirectly, those in the creditor's class. See In re: Granite Partners, 213 B.R. at 446-47 where Judge Bernstein extensively discusses those situations where such requests had been granted and contrasts them with situations where they have not been granted.

The motive of the creditor has unfortunately crept into some of the cases in their analysis of whether the benefit conferred was direct or indirect. Some courts have taken the view that acting in one's self interest bars a creditor from making a substantial contribution claim. Other courts, I think, have properly recognized that mere motive should not be determinative of the outcome. However, that still leaves the question of whether the benefit was, in fact, direct or rather a mere consequence for others in the same class as the claimant. Se In re: Pow Wow River Campground, Inc., 296 B.R. 81, 86 (Bankr. D. N.H., 2003) and In re: DP Partners, Limited Partnership, 106 F.3d 667, 673 (5th Cir., 1997), cert. denied 522 U.S. 815 (1997).

What the discussion about motive does highlight, however, is the heavy burden that a creditor faces in showing that it, in fact, made a direct contribution, as opposed to an indirect benefit flowing from actions it's taken to further its own interests in the case. See In re: Dana Corporation, 390 B.R. 100, 108 as well, again, as In re: Granite Partners, L.P., 213 at 445.

As I noted in the Bayou case, a corollary of the requirement for direct contribution, which is also related to the fact that claims for substantial contribution will not be allowed where the work duplicated the work of others who are already being compensated by the estate, including the debtors'

counsel and counsel for official committees, is that the statute by its own terms, as well as the logic behind it, focused the Court on the process of the case, the Chapter 11 case as a whole in which certain entities are charged with fiduciary duties to act on behalf of not only themselves but the whole group that they represent, the debtor, and the creditors' committee, and, in this case, the equity committee, and secondly, the fact that those entities are paid by the estate in recognition to those duties and responsibilities. Therefore, it's normally their job and their professionals' job to ensure that the Chapter 11 case proceeds properly and efficiently.

Third parties, such as the IUE, here, are generally, in that context, representing themselves, although of course, they interact with the debtor and indirectly may be benefiting other parties by interacting with the debtor and the other fiduciaries in the case. And therefore, I think it is proper that compensation of those types of third parties who do not have such duties is reserved under Section 503(b)(3)(D) and (b)(4) for "those rare and extraordinary circumstances where the creditor's involvement truly enhances the administration of the estate". In re: Dana Corp. 390 B.R. at 180. And as Judge Schwartzberg said in In re: Texaco, Inc., in addition to showing an actual and demonstrable benefit to the estate, compensation for fees incurred must substantially contribute to

the administration of the debtor's estates. That's at 90 B.R. 622, 630 (Bankr. S.D.N.Y., 1988).

It's in that light that I had examined whether, in fact, the IUE-CWA and its counsel made a substantial contribution in the case. The application contends that they did so in three ways. First, that as the party sitting across the table from the debtors in connection with the debtors' motions to reject the collective bargaining agreement under Section 1113 and modify retiree benefits under Section 1114 of the Bankruptcy Code, they facilitated an ultimate negotiated solution of the issues that prompted the debtors' motion to reject that resulted in an agreed upon MOU which ultimately formed the basis for the buyers of the debtors' assets that employ these union workers' collective bargaining agreement with the IUE-CWA.

Second, they contend that the union and its counsel was active in objecting to the so-called EPCA in its two versions, pursuant to which certain proposed investors in the debtor were to make an investment in the debtor, and in essence, be sponsors of the debtors' reorganization. Other than objecting to aspects of the EPCA that dealt with management compensation and bonuses, it appears that the work done in this category related primarily to ensuring that the terms of the previously-agreed upon MOU would continue as part of the investment and the reorganization.

Finally, the application asserts that the union was active and should be compensated for objecting to the debtors' motions for approval of the so-called KESIP, or key employee compensation plan, during the course of the case, as well as the debtors' proposal to have the Court approve substantial exit bonuses for management upon the -- that would become effective upon the emergence of the debtors from Chapter 11. With regard to the KESIP litigation, the Court approved, and periodically approved updates of a KESIP program that provided for ongoing performance bonus targets for management on a fairly widespread basis, as well as salaried workers. The Court largely overruled the union's objections to those motions, although it is also the case that the original motion was modified in light of, among other things, comments by the Court at the hearing to address concerns that had been raised at the hearing about the nature of the bonus program and that those modifications and the spirit behind them reflected the periodic extensions of that program and the development of the targets for those extensions.

With regard to the exit bonus program, the union largely prevailed in its objection, and the Court determined to reduce the proposed bonuses from roughly eighty-two and a half million dollars to approximately sixteen and a half million dollars. However, that bonus program, as opposed to the ongoing performance bonus program, that is, the exit bonus

program never went into effect because, given the cataclysmic events in the auto industry that ultimately led to GM and Chrysler's Chapter 11 cases and clearly evaporated billions of dollars of value in Delphi, the plan that was ultimately confirmed in this case was a liquidating plan that did not contemplate continued senior management role, and therefore, did not contemplate any exit bonus incentive program, but rather, the retention by DPH of an employee to manage the claim allowance and objection process and the wind-down and distribution process.

The Court's view of the KESIP litigation is that that litigation, to the extent it was successful, was a combined effort of the official unsecured creditors' committee and the union, as well as the United Auto Workers union. I cannot separate out a benefit conferred directly by the IUE-CWA in connection with the modifications of the KESIP that were implemented during the case from the efforts of the unsecured creditors' committee. I further note that the objections by the IUE-CWA, as well as the UAW, to the KESIP program were, in fact, very closely related to an overall approach by the union in response to the relief proposed by Delphi in the 1113/1114 motion context where one of the factors the Court needs to consider is the, colloquially, sharing of pain by all constituents in the case, and particularly by managerial and salaried employees. It appears to me, therefore, that while

there may have been some benefit that accrued, even given the participation of the official unsecured creditors' committee, that that benefit, to the extent it existed and can be attributable to the IUE-CWA separately, was indirect and only a consequence of the IUE-CWA acting as it would have acted in any event as a creditor and target of the 1113/1114 motion.

With regard to the emergence bonus portion of the request, it appears to me that if, in fact, the plan, as confirmed and consummated, had included in it a provision for ongoing senior management that would be compensated and would include some form of emergence bonus and compensation, that in that context, the IUE-CWA would be entitled to a 503(b) expense because it appears to me, based on my experience in the case, that unlike with the KESIP litigation, it took on a greater role in the bonus litigation over and above, clearly, the role of the official committees, and in fact, carried the laboring oar in that litigation. Moreover, it was successful in that litigation. However, the 503(b)(3)(D) and (b)(4) analysis of whether there was a substantial contribution is retroactive looking, and I cannot ignore the fact, therefore, that not only were no bonuses implemented, but also there was no need for any bonuses because the facts had so materially changed by the time that the plan went effective and, consequently, the work that was done, although it was valid and excellent work, did not confer a direct benefit on the estate since there were no

managerial employees to receive emergence bonuses and ongoing compensation under the plan that actually went effective.

The union has argued that its defeat, in large measure, of the emergence bonus motion conferred, nevertheless, a benefit on the estate by enhancing goodwill among the debtors' hourly employees and union workers. However, I believe that that type of benefit is too amorphous or unspecified to qualify under Section 503. I don't believe it can be quantified in any way, and it's not clear to me, therefore, that there was, in fact, a benefit and that the union has carried its burden on that point.

With regard to the role that the union played, in respect of the negotiation and preparation of the MOU. Clearly, the union was well-represented and addressed the complex issues raised by the debtors' motions in an effective and responsible way. However, again, I believe that the benefit conferred on the estate was indirect, and that it was merely as a consequence of the union doing its job as a union in negotiation a responsible agreement, in light of all the facts. As the courts have repeatedly noted, the Chapter 11 process is one that, by its very nature, involves not only litigation but negotiation among multiple parties, and that the norm in Chapter 11 cases is the negotiation of multiple disputes that lead to a Chapter 11 plan. Given that fact, it's consistent with counsel's right to be compensated by his or her

client in a Chapter 11 case, and where there's an appropriate basis for the client to have an unsecured claim against the debtor for such work, but such work does not rise to the level of compensability in hundred cent dollars under Section 503(b)(3)(D) and (b)(4). Otherwise, again, one would be going beyond the purpose of the statute and the narrow basis in which it should be read. See In re: Columbia Gas Systems, Inc., 224 B.R. 540, 549 (Bankr. D. Del.) and In re: Alumni Hotel Corporation, 203 B.R. 624, 632 (Bankr. E.D. Mich. 1996). This does not mean, of course, that as part of the 1113/1114 negotiations, a debtor may agree to compensate the union for the fees and expenses of its professionals, and in fact, the debtor did that with regard to its financial advisors. I believe that is the context of the cases involving unions cited by the IUE here, In re: Trans World Airlines, Inc., 1993 W.L. 559245 (D. Del. June 22, 1993) and In re: Bethlehem Steel Corporation, 2003 W.L. 21738964 at 12 (S.D.N.Y. July 28, 2003). It is true that those agreements were objected to by other parties in the case, and the Court's approved the amounts under Section 503(b). However, I can't ignore the context in those cases, which was one where this was a negotiated result in the context of a negotiated modification of the collective bargaining agreement. That is not the context here. That, to my mind, means that the work done in connection with the 1113/1114 motion does not rest at the level of a claim under

Section 503(b).

That leads to the alternative grounds that the debtors have raised for objecting to the motion that is that under MOU, and in more particular, Section H.3 of the MOU, the union waives the right to make this application in the first place, and that when the Court approved the MOU, the union was, in essence, estopped from making this request. I've reviewed the applicable language of Section H.3, and while I understand the debtors' argument with regard to its applicability to the work done in connection with 1113 and 1114 matters, I don't believe it applies to the work done in connection with the EPCAs and management bonuses and compensation. I say that in part because it doesn't refer to an administrative expense, but rather to all claims. But more importantly, because the release is not specific enough on this type of claim. On the other hand, as I've stated, the management compensation and EPCA work would not be covered, in any event, under 503(b).

The debtors have also objected to the reasonableness of the work done by counsel for the IUE-CWA. I believe, based on my review of the time records, as well as my experience with this case, that the work done by Mr. Kennedy's firm was, clearly, reasonable and would be compensable if it were work that would be tied to a substantial contribution in the case. Mr. Kennedy's done an excellent job with this case, and I have appreciated his approach to the case and approach to practicing

law. But unfortunately, it's an approach -- unfortunately for him, it's an approach that's only compensable by his client.

The ruling on reasonableness does not go, however, to what would be covered by the timesheets if, in fact, I were to allow any portion of these claims. In my review of the timesheets, it appears to me that some of the time that's included in the various categories really shouldn't be there but really pertains to other matters for which the IUE is not seeking compensation. So I would excise that time, if I were to grant any other request. But because I'm not granting the request, we don't need to go through that exercise.

So for those reasons, I'm going to deny the application in full, and the debtors can submit an order consistent with my ruling.

MR. MEISLER: Thank you, Your Honor.

Your Honor, the next matter on the agenda, matter 10, certain senior noteholders substantial contribution application, that's the C.R. Intrinsic. Yesterday, we submitted a scheduling order, so they've been adjourned to June 30th.

THE COURT: Great.

MR. MEISLER: Your Honor, the last matter on today's omnibus hearing agenda is the ad hoc trade committee's substantial contribution application. Your Honor, the same exhibit binder that I introduced into evidence for the IUE

would apply for the ad hoc trade.

THE COURT: Okay.

MR. MEISLER: I do want to make one preliminary comment before Mr. Rosner takes the podium, and that is that Mr. Rosner is going to say on the record, and he makes the statement in his pleading that was filed yesterday that there's been a violation of our agreement not to object to his application. And what I want to point out is two-fold. Number one, we think that there is language in the December 6, 2007 transcript that says that if there is a material change to distributions to unsecured creditors, then there is no such agreement. But at the same time, that language was not clear, so we also included in the footnote -- that was footnote 2 to our objection -- that we would only object to the claim, number one, to the extent that this Court agrees that we have the right to object, and number two, to the extent that there's grounds on reasonableness to object to the claim.

Thank you, Your Honor, and on that note --

THE COURT: That objection, though, was to the IUE, right? That footnote appears in the objection to the IUE?

MR. MEISLER: Your Honor, that objection applied to the IUE --

THE COURT: Yeah.

MR. MEISLER: -- it applied to Highland, and then there was a footnote --

THE COURT: Right.

MR. MEISLER: -- that had some discussion --

THE COURT: I remember the footnote now, yeah.

MR. MEISLER: Terrific. Thank you, Your Honor.

THE COURT: Okay.

MR. MEISLER: Your Honor, I cede the podium to Mr. Rosner.

MR. ROSNER: Thank you.

THE COURT: Okay.

MR. ROSNER: Good afternoon, Your Honor. David Rosner from -- yes -- all right, this, like I, wish I was taller. I'll do it like that.

THE COURT: Okay.

MR. ROSNER: From Kasowitz, Benson, Torres & Friedman on behalf of the trade committee. I also remember that footnotes. It was a very long footnote, so it's memorable, for sure. Just to respond to that point, I don't think it's a hugely important point for this afternoon, but I actually think that that sentence probably was one that I wrote that said we won't object, unless, of course, you materially change things for unsecured creditors, as opposed to if you materially change things for unsecured creditors, you can now object to me. I think that's what that probably meant, Your Honor. It was certainly something that I wrote, but, as I stated, I don't think it's --

THE COURT: In any event, we have the U.S. trustee's objection.

MR. ROSNER: In any event, we have the U.S. trustee's objection. That's correct.

THE COURT: Right.

MR. ROSNER: You know, I read Bayou, which came out after our application was filed, and I heard you loud and clear in court just over the last hour -- or, last half hour in dealing with the union's objection. So there's going to be a few points that I'd like to raise. I'd like to talk about some issues with Your Honor. I think -- and I probably don't need this anymore -- give you our view from the trade committee's perspective and where committees like that actually fit in the Chapter 11 process and whether determinations like today, with the union, are going to either assist or going to actually squash their participation in Chapter 11, or are going to actually materially affect the way people deal with how they deal with estate fiduciaries.

I want to go to the hindsight issue. It was an issue -- I don't recall, I don't believe you specifically addressed it in Bayou, but you mentioned it today, and it's certainly an issue that's mentioned in Granite Partners. And it puts an applicant in a very difficult position of giving up or settling with the debtor significant rights, only later to have, let's call it, its half of the bargain, its deal

eliminated because of changes that are unforeseen or unforeseeable by the party at that time. And it's clear that when the party -- nobody hires a lawyer for a zero sum gain. I want the lawyer to do something so that I can then get the lawyer to get paid, and that's all I really want it to accomplish in the matter. The lawyer is hired, the professionals are hired --

THE COURT: I disagree with that. Some lawyers do that with committees. Some lawyers create unofficial committees so that they can get paid because the unofficial committee, they settle for peanuts and then get paid. I'm not saying it's you. Some lawyers do that.

MR. ROSNER: I hope you're not saying -- I mean, it's --

THE COURT: It's not you, but some lawyers do that.

MR. ROSNER: Okay, well, I'm --

THE COURT: And that's one of the reasons that Judge Lifland in the case I cited where clearly 503(b) is not supposed to be used to buy off a pest, we've been thinking about this.

MR. ROSNER: Okay, then let me state my point a little bit --

THE COURT: And I'm not -- you guys were not a pest. I'm just saying that we have to keep that in mind when we interpret this statute because that, I'm afraid, is what has

been happening.

MR. ROSNER: Well, that's a -- from my own personal perspective as a practitioner, as a lawyer, and as a bankruptcy practitioner, that's a horrifying practice, I would think, and I don't -- certainly wouldn't endorse it nor practice it. And I can state for the record, that the trade committee came to me. I didn't go to them.

But I do think that at the time -- the time matters when people are taking positions and giving up positions and there are material benefits to the estate that occur at that time from the perspective of what happens later when there are, as we saw in this instance, unforeseeable events that the applicant, let's say, in our case, the trade committee said, well, we are going to independently and for separate reasons, we're going to fight the EPCA. And we're going to fight the EPCA because we see a creditors' committee who is doing its job, frankly. The debtor is doing what it needs to do, but it's making a deal on the EPCA which we think is damaging to the estate. And we see the unsecured creditors' committee, and it is doing its job. But its job has to address a lot of different questions. What its job is not necessarily is only to look at the interests of all of the trade creditors.

Now, you made a statement before that an indirect benefit that only applies to a class of creditors may not be subject of a substantial contribution. And I --

THE COURT: Well, I actually said if a creditor --

MR. ROSNER: Okay.

THE COURT: -- causes a benefit that indirectly benefits its class. I think an unofficial committee is a little different than that.

MR. ROSNER: Okay, because that's how I viewed it as well. I viewed if an unofficial committee is acting on behalf of a class of creditors, and Your Honor is well aware, you pointed out one of the real defects of -- apparent defects of unofficial committees. But unofficial committees, when they serve their purpose as I believe the trade committee did, here, they're not acting in their sole pecuniary interest. In fairness, they don't organize and hire a lawyer not for their own pecuniary interest, but they seek it. And in this instance -- let me not speak generally -- in this instance, they sought it for the benefit of all creditors in their class, meaning, when we fought the EPCA and we fought it and said there needs to be a fixing of the absolute priority rule, here, there --

THE COURT: I could cut this short. I believe that the absolute priority rule work that you did would, in normal circumstances, be entitled to a 503(b) award. I have serious doubts about the other work because it seemed to be other objections that the committee was making and others were making, but clearly, no one was making that absolute priority

point that needed to be made. So I don't have a problem with that. The issue comes in -- and I'm still dealing with it, I haven't made up my mind on it -- is whether, given the change in circumstances for this company, that even mattered. And what you're going to tell me is that there's a continuum and peace over the plan process on this issue benefited the debtor during that continuum until the bottom fell out. And the bottom didn't completely fall out, and so therefore, there was some value there because there was some value to reorganize.

MR. ROSNER: And there was value to reorganize then, and it continues today. That's the point. That's the continuum, I think, point that you were making.

THE COURT: But how do I quantify that?

MR. ROSNER: Well, we quantified it at 1.5 million, right? And I recognize that Your Honor's not going to quantify that at 1.5 million. And I do want to make this point because I think it's an absolutely critical point to what happens when unforeseen circumstances affect prior agreements amongst parties. And by agreements, I do not want to overstate what I think our agreement was with the debtor. I think our agreement was a non-objection agreement. It was not --

THE COURT: Right, no, the record's really clear. I said that you still have to make an application and --

MR. ROSNER: Which we did. It was not a consent and please, here --

THE COURT: Right.

MR. ROSNER: -- you will get paid.

THE COURT: Right.

MR. ROSNER: But I think all of the trade committee's efforts on the subject that we were just discussing that were geared towards the fair and equitable treatment on parity with all other creditors and on the absolute priority rule, on a consolidated basis with the fullest amount realized in accordance with legal entitlements at the lowest possible cost to the estate, at the least possible delay, and at the minimal use of time through a confirmed plan. All of that exists today. And all of that exists today by virtue of the efforts that were taken a few years ago.

THE COURT: Okay, but this is the issue I have. There seemed to me to be a need for an unofficial committee of trade creditors. And you all identified one area where the general unsecured committee -- I mean, the official unsecured committee and the debtor had not represented your clients', as a group, interest, which is on the parent company bonds and the absolute priority rule and the value of the individual subs. But in looking at the time entries, that's a pretty small portion of the time entries. I mean, there's a lot of -- I mean, there's just an enormous stuff in here beyond that: dealing with GM and different claims. And your clients, clearly, wanted you to be active in more than just those specific issues related to

EPCA and the plan term sheet. And it seems to me that the committee was doing that.

MR. ROSNER: Well --

THE COURT: I don't fault them for hiring you, also, to do it, because they wanted to have someone they could talk to directly and share their strategies with and the like. But I don't see how that, unlike the other issue, really served a purpose for the estate.

MR. ROSNER: That issue can disappear very quickly in a case like this with GM and the company sitting in a room and deciding to make that change. When we got to the point, we hired an expert, I prepared an expert report, I deposed a bunch of witnesses, we prepared to go to court, and we prepared to fight on these issues. And then we reached the agreement which we reached, which we thought was an agreement that would advance, and has advanced, and continues to advance these estates through today. I'm not at liberty, and I can't recommend to any lawyer to then call it a deal and, while things are moving at the pace that this case moved, because you went from first EPCA to second EPCA, to MOU, to GM coming into a room and things changing, and I cannot possibly be able to represent either to a client or to other constituents in the case that it doesn't matter because our transaction is sacrosanct. We've won that battle. It will not -- because remember, even in the first EPCA agreement, the paragraph that

says that -- all it says is they're not going to object to our substantial contribution. I have an agreement that we fix this problem; there's no a plan term sheet that's to fix this problem; there's a plan of reorganization that fixes this problem both on substantive consolidation, both on the treatment of the toppers as well as the treatment of the trade creditors. But how is this going to change going forward?

Your Honor, you saw me very infrequently in court. You saw some of my colleagues, also, very infrequently in court. We did not take positions that we did not need to take. But there were things that we needed to do in order to ensure that that agreement continues forward and that that agreement, actually, would not be sacrificed, particularly as things started to go south. And when the unforeseen circumstances kicked in, and we saw that there could be material changes, there were points in time where people were arguing that absolute priority was still being recognized though values were dropping to sixty-two cents on the dollar and the toppers were being paid. So I would submit to Your Honor that once having achieved the substantial benefit to these estates, it does nothing if that is not followed through to the end so that you have established that you are able to actually close on the benefit to the estates. Now, that deals with that issue.

There are issues that we -- there are matters that we undertook in this case that we think we're entitled to as a

substantial contribution. But I heard Your Honor loud and clear this morning, and there are a few points that I'm going to -- if you want to cut me short on the other points that we've raised --

THE COURT: No, go ahead.

MR. ROSNER: Okay. We think it's impossible to separate the need for a trade committee with the actual organization of a trade committee, and that takes some time and that takes --

THE COURT: I understand that.

MR. ROSNER: Okay. We think that the negotiations, beyond the points that I've said about the independent points that we brought to the table, beyond that point, are compensable and are necessary.

I think we've covered these.

THE COURT: Well, why is the work on post-petition interest necessary? What -- I mean, the committee was pushing that hard.

MR. ROSNER: The committee had raised it. The committee was not necessarily pushing it to the point where they had reached an agreement, or at least, they had said that they were getting Tom -- I'm sorry, not Tom -- the plan investors, let's call them, where they were considering post-petition interest. We then went in and -- that was exactly the time that we brought our expert, and I handed Jack Butler an

expert report and said we are actually going to put this guy -- this witness on the stand. Here's the report; here's what we're going to testify to. At that point, they consented with me to pay the post-petition interest. Then they held back and said that it was going to be at a statutory rate -- at Michigan's statutory rate, which would be, if I recall correctly, 4.875. And I said I don't think that that's appropriate, and I wanted it set for all trade creditors, again -- not trade committee at ten and everybody else at two -- but I thought it should be set at a very different rate, and we ultimately, in the agreement, decided to leave it open with a floor of Michigan. So that was an agreement that was made with me. I can't tell you that -- I know that the unsecured creditors had raised the issue of post-petition interest, but they have a lot of other constituents to look after, and I was looking after the domestic trade subsidiaries.

THE COURT: Okay.

MR. ROSNER: I've told you the reasons that we -- we took a very hard look at the second EPCA and the disclosure statement and the plan. Now, I looked through the time records, as well, and not as carefully, I think, as I should have before we filed them because there is a break in between two different things. And what we tried to do, and I don't think we successfully did -- either we didn't successfully do it or we didn't enter our time records in a very strong manner.

But there were issues that we handled for individual members of the committee, itself, and these were claims -- where they had issues with claims. And on those issues, we -- at my firm, we set up separate matters under the names of the individual creditor, and we billed them. However, when I'm looking at some of those entries, and I'm sure Your Honor is looking at some of those entries, it doesn't -- it's not crystal clear that we were able to separate out as well as we did. We made a rough justice agreement with -- not agreement -- I'm sorry; I don't want to use the term agreement -- a rough justice offer to the U.S. trustee that just said let's take five percent of our total fees, rather than going and redoing these entries. I don't have any idea, not to put Brian on the spot or anything, I don't know if that's fair. We can certainly go back and do it.

But there's a second issue that was raised during the ultimate plan modification process, and that was claims reconciliation in and of itself. Now, it's been raised as an argument against us that what we sought to do in the settlement with the debtor was to advance our interests -- by "our" here, I'm talking about the members of the trade committee -- at the expense of other members of the class. But that's not true. What we asked for, there was a very short window -- Your Honor knows, Mr. Butler likes to keep things to very short windows in order to move things along and for lots of reasons -- and there

was a very short window of dealing with claims, administration. There was maybe twenty or thirty days dealing with assignments and all kinds of things. And I think my partner, Adam Shiff, was in front of Your Honor on a very specific matter for a very specific client in that regard. We had an issue, an overall issue dealing with the claims reconciliation process that was applicable to all claims that we were working on for the trade committee. And that was separate and apart from work that we were doing for individual holders, you know, X, Y, Z clients saying I've got this claim; how do I get it allowed, can you speak to somebody. We did, in that last settlement, however, ask, as part of the settlement, that our members' claims get moved from the bottom of the pile to the top of the pile if there were a pile. I can tell Your Honor, I can at least represent to Your Honor, I can't imagine it made any difference at all because we were fighting that pile tooth and nail as it was, but we did seek that.

At confirmation, original and at the plan modifications, we raised substantial objections that if prosecuted, we think would have at least slowed down the process if not changed the ultimate outcome at that time. I think Your Honor made it quite clear earlier, and everybody recognizes that that may not have mattered, ultimately, because of where we are today and what's happened, ultimately, with the auto industry. Nevertheless, it mattered a lot at that time.

And I have to in some ways push back on this hindsight analysis because, well, for the obvious reason. For the secondary reason is that's an assignment of risk, is all we're talking about, is a hindsight of analysis. You're saying you're going to benefit the estate, you're going to do it today, the estate's going to take that benefit of the estate and it's going to utilize it, and it's basically going to throw that pebble into a pond. Because none of us has the ability to take history, pick one thing out of history, and then say everything else is going to stay the same. Everything reacts together. So they'll take that benefit, it's going to go forward, and then you say at the end of the day, we're going to go back, and we're going to look at everything and say, you know what, turns out, we threw that pebble in but somebody drained the pond.

THE COURT: But this is pretty dramatic. I mean, there's no post-petition interest in the plan, for example.

MR. ROSNER: I'm virtually certain there's no post-petition interest in the plan. And I recognize that. But at the time --

THE COURT: I mean, I would contrast that with, for example, your work on the absolute priority rule because that, basically, ended a fight and people were wasting a lot of money on the fight and it could have, you know, that could have continued.

MR. ROSNER: And I appreciate that, Your Honor. I

just want to point to what happens -- what do I do the next time that I face this issue of where I believe and the parties believe and the parties represent that they believe by saying we won't object to you. I think what I have to do is I have to make my agreement contingent on getting immediate approval and payment of the fees. And now, that doesn't mean that the Court's going to allow it to happen that way, but I think that I have to do that because otherwise, I'm bearing this risk of what ultimately happens in the case. And so --

THE COURT: But isn't that what the statute says? I mean, how could I determine that you've conferred a direct benefit anyway if the plan -- I mean, I would do that at the confirmation hearing.

MR. ROSNER: It wouldn't be a 503(b) application; it would be a contractual term. So what you'd have is you --

THE COURT: There's no authority to do that.

MR. ROSNER: There's always authority to -- I mean, in my opinion, there's always authority to make a contract with the debtor and have it approved that contains a provision for the payment of legal fees at that time. Not forward-looking legal fees; I'm saying at that time.

THE COURT: Then why have 503?

MR. ROSNER: Well, 503(b) is a different section to go under. I mean, I have --

THE COURT: But that's the point. I mean, Congress

put in 503(b). They decided that in addition to 503(a), when it comes to professionals, you need (b).

MR. ROSNER: But I don't -- I believe Your Honor has probably been presented with agreements that provide, within the agreement themselves that creditor X will do the following, creditor Y will do -- I mean, a company will do this, and the payment of the fees will be part of the agreement, and that agreement's been put forward under a business judgment standard and that it's been --

THE COURT: I don't know. I don't think I would approve that. That's why I asked the question at the hearing when this came up.

MR. ROSNER: In Lyondell, I can only say that it was -- there have been cases in which I have been involved, for example, the Mirin (ph.) case in which there was --

THE COURT: Well, look. If, for example, your committee came in at the beginning of a case and negotiated a DIP agreement, all right, instead of the unsecured committee -- for some reason, you were the key guys -- I believe -- I could certainly approve that in that context because the money's there. The debtor has the benefit of that money. But --

MR. ROSNER: So what's the difference between that and the debtor getting a benefit -- money's just a benefit.

THE COURT: Well, I know, but it's quantifiable; you can see it actually happening, and it keeps the debtor running,

whereas a benefit to negotiated post-petition interest claim when the ultimate plan doesn't have post-petition interest, it's -- I don't know whether that's --

MR. ROSNER: I understand what you're saying, Your Honor. I'm moving away from the particular point of the post-petition interest and just saying, as a general matter, what happens if --

THE COURT: Well, I think there's a continuum on some things and not on others. I think that's all I can say. You know, I think -- and I, you know, I was -- that was my view on the IUE, too. If they had been able to quantify more than sort an amorphous sense that there was some goodwill, they might have gotten something. But they didn't, you know, from their winning on the bonus point. But it seemed to me that they hadn't quantified any good will, really, by the wage employees, and it was probably offset by the ill will from the salaried employees. So, you know, I -- but the idea of a continuum, I accept.

MR. ROSNER: Okay, and expanding on the idea of the continuum, all I would want to close with, Your Honor, is to say that -- and maybe this will fall into your amorphous category, and I don't want it to fall into it, but I just said that, so -- is that each and every step that you take that advances the ball forward, it does provide, at that instant, the benefit of the lack of delay, the time, and the money, and

the effort, and that will always be a benefit to the estate all the way through.

THE COURT: Right.

MR. ROSNER: Because you don't have that time wasted, the unforeseen circumstances don't change that. You're in this place because of that.

THE COURT: Tell me again. What was it that was done with the second EPCA?

MR. ROSNER: In the second EPCA --

THE COURT: Because there were really two agreements by the debtor. There was a 750 and the 750. And the second one was the second EPCA, I think, right?

MR. ROSNER: That's right. Yeah, I mean, there was a little bit of overlap; at the time of the 750, it really wasn't 750. It was higher than 750. But we agreed to a certain number.

THE COURT: But, what were your issues on the second EPCA that were different from the committee's issues -- I mean, the official committee's issues?

MR. ROSNER: Our issue was that it was a procedurally defective agreement, that it was actually something that was brand new, and it had to -- and you know what, I'm not -- I don't have with me a chart that says what was exactly different than what the committee said. We were very focused on the usurpation of value from the trade creditors to the toppers,

which we viewed as continuing the issue of the absolute priority rule.

THE COURT: Right.

MR. ROSNER: That's how we saw the --

THE COURT: And did they try to sneak that in the second EPCA?

MR. ROSNER: Yes.

THE COURT: The Appaloosa people, since they own the toppers?

MR. ROSNER: Yes. That was a -- we made it a huge point, and this was thrown back into -- back at me that we made a huge point that we believed we understood that there was large ownership of the toppers by the plan investors, and therefore, that was a justification -- that was the reason that they were demanding large payments to them, both on the investment side but also changing the priority on the toppers.

THE COURT: Right.

MR. ROSNER: And that was a very -- that was a point that was specific to us. And then I think that -- and we only adopted a few of the committee's objections. But for the most part, I think we were focusing on the absolute priority and the continuation of that objection in the second EPCA. But ultimately, we did what I think Your Honor wants people to do in acting responsibly in a Chapter 11 case, which is to prosecute your issues, to bring them to the table, to not

necessarily want to be the best lawyer in the courtroom and show everybody what you can do and cross-examine David Tepper and tell everybody -- you know, but ultimately sit across the table, get your issues resolved, and then withdraw everything and then not be heard from again, which is, frankly, where you saw us. You didn't hear from me after that point.

So with that, Your Honor, I didn't address the specific objections from the U.S. trustee, which I can.

THE COURT: Okay.

MR. ROSNER: Just let me see where --

Just running through them quickly, one of the main objections that I think that was made, and I hope that I've already spoken to, is that we may have benefited the trade committee at the expense of others. And we -- that -- there's some implication or express statement that we did things solely for our benefit, meaning the members of the trade committee. Now, I'm here for the trade committee. I'm not here for any specific member of the trade committee. But the trade committee, nothing that we did was for anybody's benefit that would have benefited them, but for the individual claim stuff which, as I said, I meant to withdraw out of there, I would withdraw out of there. We made the five percent offer. And even if all of that is unsatisfactory, I'm prepared to go line by line and take everyone of those things out. The client who gets the bill for those things may have a very different view

of it this late in the game, but I'm happy to do that.

On that specific point, and you actually -- Your Honor actually asked this at the hearing, this specific point of us asking if we could take our claims that -- this now being members of the committee -- and put them to the top of the pile, as there is a claims administration. We did not seek to have our claims allowed; we did not seek to have a leg up on anybody else, nor did we seek to have anybody else's disallowed. We just said if you have to do all these things and we're negotiating a deal with you, can you kind of put ours to the top. I can tell you, as I did before, I don't think it helped very much. We did try to reshuffle the deck, though.

I don't believe the U.S. trustee credited the efforts that we undertook, and I think -- they stated that we had duplication. In our original EPCA obligation -- in our original EPCA objection, we identified fourteen objections, only one incorporating the UCC. And I think the point there as I've made at least once, is that the UCC could not singularly represent a group. And I do think, and I know -- and I believe Your Honor does think that committees like this do serve a purpose, particularly in multinational, multi-entity cases. But they have to be confined to what they do, and they shouldn't be out there on every single issue. And I'd like to believe that that's what we did. There certainly was some overlap with what other people did because if other people

settle and you haven't raised an objection, then they can say you haven't raised that objection. So however, we did raise the objections on treatment and absolute priority as we discussed.

And the not being able to settle around somebody is important so that certain objections are not settled with one party, and yet the trade creditors find themselves in a position where they've been undercut. And for that reason, there need be, in certain instances, an adoption of other people's arguments.

Your Honor, we honored our bargain. The plan was confirmed. There's been a change in economics; we had nothing to do with that. Our fees are reasonable. It is true, the U.S. trustee is absolutely true that we did not put things into separate projects. We viewed this as Delphi. I don't think it's justified, at this point, to break it down. I think the entries say what they do. I know there's somewhat of a relaxed standard, but we didn't do that, and we also didn't go into this case anticipating that we would be filing an application. So I think that pretty much responds to everything. And if Your Honor has any other questions --

THE COURT: Okay.

MR. ROSNER: Okay. Thank you.

THE COURT: Thank you.

MR. MASUMOTO: Good afternoon, Your Honor. Brian

Masumoto for the Office of the United States Trustee.

THE COURT: Good afternoon.

MR. MASUMOTO: Your Honor, as indicated by Your Honor as well as by counsel, the U.S. trustee did object to the application under 503(b) for substantial contribution by the ad hoc trade committee. Bearing in mind your very extensive discussion regarding the union, I won't belabor the factors that go into the substantial contribution standard. As with Mr. Rosner, I would like to, however, highlight at the outset one of the issues that seem to be a matter of dispute both raised by the union as well as the trade committee, which is the hindsight aspect of the case. That is, in fact, the pivotal point of the 503(b) statute. That distinguishes the professionals who apply under -- for substantial contributions under 503(b) from professionals who are retained by the estate and have a special fiduciary obligation. As Your Honor is aware, there is case law that indicates that retained professionals cannot be, essentially, criticized or treated in the same fashion in a hindsight fashion, that if, in fact, actions are taken reasonably at the time they were taken, you cannot, in retrospect, argue that since the results achieved at some later date were not successful, but those reasonable actions taken at the time are not, therefore, compensable. So the proposal by the union and the trade committee would be to eliminate that distinction and to argue that, in fact, non-

retained professionals should be accorded that same criteria, and that actions taken reasonably at the time taken should be regarded from that viewpoint and not from the ultimate end result, which would essentially eliminate the distinction between having retained professionals and having other professionals involved -- insert themselves in the case, certainly, for the idea of being compensated.

THE COURT: Let me ask you, though -- and I don't know the answer to this. I should, but -- and I did once. During the height of this case, which was basically the period over the plan summary through, I guess, EPCA version two, do you recall, or does anyone recall sort of what the either monthly or weekly run rate was for professional fees in the case?

MR. MASUMOTO: I'm sorry, Your Honor. I don't have that information.

THE COURT: I mean, I would assume it would be in the hundreds of thousands of dollars.

MR. MASUMOTO: I think t7hat's quite likely. And of course, that wouldn't take into account all of the input by either the union and/or the other committees.

THE COURT: No, I understand. But the reason I'm asking is Mr. Rosner made the point that, you know, I shouldn't treat this change in circumstances as an absolute cut-off or vitiation of what they had done because the case really was a continuum. And taking that one step further, if they had, for

example, litigated these issues, which they settled, for even a month longer, would it have cost the estate, you know, what? Two million dollars? I don't know. I don't know the answer to that. That was why I was asking.

MR. MASUMOTO: Well, Your Honor, that raises the issue that I believe you started off with Mr. Rosner, which is essentially, isn't that sometimes what an unofficial committee might do? They come in, insert themselves, litigate --

THE COURT: Oh, know, I understand. But here, they weren't a pest. I don't think they were a pest. I mean, no one said they were a pest, so --

MR. MASUMOTO: And I'm not -- I'm not making that statement either.

THE COURT: Okay.

MR. MASUMOTO: But then there becomes -- in this case, obviously, again, a continuum --

THE COURT: Right.

MR. MASUMOTO: Where do you make the distinction that one professional or one unofficial committee is a pest and another is not?

THE COURT: Well, you know pretty well.

MR. MASUMOTO: Well --

THE COURT: I think you can tell.

MR. MASUMOTO: I think in some circumstances, but where along that continuum does --

THE COURT: Well, put it this way. If they had litigated that extra month or two and then had been bought off, it would be a different story, right?

MR. MASUMOTO: Absolutely, Your Honor. But again, the issue is where do you draw that line? I mean, another week, another month --

THE COURT: Okay.

MR. MASUMOTO: -- of the litigation? Every professional would be in the position to -- if you don't have the bifurcation between --

THE COURT: Well, that's the --

MR. MASUMOTO: -- professionals --

THE COURT: -- but in the way, that's kind of a nice question mark over their heads, right? Encourages them to settle --

MR. MASUMOTO: And that is the risk inherent of -- by these individuals. If, in fact, these professionals believe that their participation is critical to the case, then they should seek, in fact, a separate committee, recognized by the Court, with the permission of retained professionals. If you don't, then they have to be subject to the standard under 503(b), which is a retroactive result-oriented perspective and evaluation.

Getting back to the -- sort of the status of this case and this particular claim, there's some reference to the -- I

guess the December 6th hearing, whereby there was an agreement between debtors' counsel and I guess the official committee of unsecured creditors and the ad hoc trade committee. And again, I believe initially, this was alluded to by Mr. -- or referred to by Mr. Meisel (ph.), that there was a provision within the agreement which provided that the objections by the trade committee would not apply if, in fact, there were substantial modifications to the plan that affected the unsecured creditors. It seems to me that in fact, that the corollary to that would be the subsequently agreed upon compensation that was allowed or not to be objected to by the creditors' committee and debtors' counsel was essentially tied to that same agreement.

Obviously, it wouldn't make sense that if, in fact, the circumstances changed, as they did in this case, and the terms by which the agreement had been agreed upon were no longer applicable, which would then free up the trade creditors from objecting to such a plan, that by the same token, they would have the benefit of the agreed upon limitation -- the agreed upon concession regarding their compensation.

So in fact, from my perspective -- and obviously, since the U.S. Trustee wasn't a party to that agreement, I would have thought the debtors would have been -- the debtors and the creditors' committee would be in the position of saying that look, the agreement on compensation is no longer

applicable. We -- clearly the terms on which it was based, which is the agreed upon EPCA provisions and so forth, obviously are not applicable in the modified plan. And accordingly, any agreement with respect to compensation is no longer in effect.

And just to -- and also to point out that at the time this agreement was made by debtors' coun -- the concession by debtors' counsel and the unsecured creditors' committee, there was a perception that there was equity in the case. So it would have been a lot easier for both those parties, both the debtor and the unsecured creditors' committee, to say whose ox is being gored. It's really the equity holders. So if -- and the equity holders didn't consent to the compensation that was provided for here. And so the expectation was, if anybody would complain and would be in a position to and would want to complain, it would be the equity holders.

Now, as events turned out, in fact, there is no equity in the case. And in fact, you don't even have an equity constituent who would be motivated, at this time, to argue against those fees. So I think the agreement that the trade committee relies upon to indicate that they should be somehow insulated from any challenge under 503(b), is really not applicable; that in fact, they are -- they have to completely comply with the provisions and the requirements for a substantial contribution.

And again, not to belabor the factors that Your Honor mentioned. I won't go into it anymore, but except to say that in fact, your decision with respect to the union is quite relevant here. But ultimately examining the outcome of the case, by looking at the modified plan, which seems to have been a dramatic change from essentially I guess -- from many perspectives, from a hundred percent plan to unsecured creditors to what I believe currently, in discussions with debtors' counsel is effectively a five percent plan to the unsecured creditors, and equity has been wiped out.

Under those circumstances, by looking at the results that have been achieved in this case, unfortunately, in hindsight, one would have to conclude that the services rendered by the trade committee, did not yield a benefit to the estate. It's unfortunate. But those are the circumstances. And that is the understanding on which these professionals entered into the case and provided their services. They cannot avail themselves of the same standards that apply to retained professionals and have to live by the outcome of this case.

As indicated in our papers, again, just to also -- to highlight that as Your Honor did discuss, I believe with -- there was some colloquy with Mr. Rosner, that in fact, many of the services rendered by the trade committee were, in fact, also argued by and asserted by the unsecured creditors' committee in some cases, earlier by the equity committee. And

unless Your Honor would like to get into the specifics regarding the reasonableness of the compensation, again, from our standpoint, we believe that they have -- that the burden of proof on the trade committee to establish their substantial contribution has not been satisfied in this case.

But if Your Honor does believe that somehow the reasonableness standard as to the existing compensation should be examined, we'll certainly be willing to discuss certain specifics. Although, as indicated, we believe that there are a great deal of services regarding analysis of claims, the revisions to the joint interest in fee sharing agreements as well as reviewing of the dockets and so forth, which should not be compensable in any event. So unless Your Honor has any further questions, that's all I have.

THE COURT: Okay. Thank you.

MR. MASUMOTO: Thank you.

MR. MEISLER: Your Honor, I just had one comment in particular, and that's with respect to your question regarding the continuum and the absolute priority change to the plan that was accomplished by Mr. Rosner and the ad hoc trade committee.

What I'd like to note is that at that time there were unique dynamics at play that allowed the plan investors to get the toppers a recovery. At the time we were contemplating a par plus accrued plan at plan values. And so the plan investors and stakeholders thought that there was some

reasonable likelihood that when this went out to vote, creditors would consent to that treatment even if there was some dispute as to the value or valuation of what that par plus accrued at plan value meant.

In the plan that was ultimately consummated -- in the modified plan -- there just simply was not sufficient value to be able to put something forward that would have created the same dynamics and would have had the same issues at play. So in the modified plan, there simply never would have been an absolute priority issue to deal with. Thank you, Your Honor.

THE COURT: Okay.

MR. ROSNER: Your Honor, may I just quickly --

THE COURT: Sure.

MR. ROSNER: -- argue it from here?

THE COURT: Yes, that's fine.

MR. ROSNER: Just, you know, very short points. In terms of whether somebody would toll out a hearing in order to cause expenses, to accrue on an estate, I just want to state that at no point did the trade committee seek an adjournment of any hearing. It sought to work only within the time frame that was set by the debtors.

I think seeking a separate committee every time that a group wants to represent a specific constituency would cause a very large -- Your Honor lived through the equity committee hearings themselves, and I think it not only is not such a

great idea for proliferation of committees, but also not just for the amount of -- you know, the hearing time, in determining whether there should be --

THE COURT: But I think Mr. Masumoto's point is that when there's -- when you are an unofficial committee -- representing an unofficial committee, there's always risk that you won't get paid by the estate. I mean, that's always a risk.

MR. ROSNER: Right. And equally we recognize there's a risk and the greater risk under 503(b). That's why I'd like to state that in the original EPCA order, just to be clear, it actually did not reserve the right of the debtors or the committees even to object on reasonableness. That's not how it was written. However, I'm -- we always recognize that it's the Court's province --

THE COURT: Right --

MR. ROSNER: -- to make this determination.

THE COURT: -- all right. We had that back and forth at the hearing.

MR. ROSNER: Yeah.

THE COURT: Yeah.

MR. ROSNER: Okay. So and just Mr. Masumoto said, and I think that I just wanted to be clear on this, because I think he used the phrase "an agreement on fees." There is no agreement --

THE COURT: No, there's no agreement. I mean the transcript's really clear. I forget whether you attached it or the trustee attached it.

MR. ROSNER: We both -- I think they have it in the record and we attached it as well.

THE COURT: Yes, it's very clear.

MR. ROSNER: So when both sides attach, it seems like it should be okay.

THE COURT: Right. There's no agreement.

MR. ROSNER: Okay, thank you, Your Honor.

THE COURT: I mean, it is clear you have to apply under 503(b) to get paid.

MR. MEISLER: Your Honor, we do believe that we reserved the right --

THE COURT: Oh, that's a separate point. I'm just -- I reacted to this other point that Mr. Rosner raised.

MR. MEISLER: Understood. We just wanted to clarify that under reasonableness grounds, we do think that we reserved the right to challenge the fees.

THE COURT: Okay. I'm not focusing on those in any event.

I'm not going to repeat my discussion generally of 503(b)(3)(D) and (b)(4) in connection with this application, which is by the unofficial trade creditors' committee in this case. I just gave that ruling and I'd just be repeating it if

I could remember it, word for word. And I will, however, as I said during oral argument, note that I believe there is one difference that's a generic difference, between the prior motion and this one, which is that the prior motion involved an individual creditor. I think the burden is hardest upon an individual creditor to get a 503(b)(3)(D) and (b)(4) award, because almost by definition, they're acting in their own interest, and they have to have done something extraordinary in terms of the administration of the case or filled a gap where those who are charged with acting in the interest of groups haven't acted, for them to be entitled to compensation from the estate under 503(b).

That I think is a slightly different analysis, but an importantly different analysis, when one comes to an unofficial committee. You have unofficial committees that work only for themselves. You also have unofficial committees that work for a constituency that goes beyond the members of the committee. The latter group uses that constituency as leverage, obviously, in its negotiations and in its litigation, because they're basically telling the parties across the table that they can not only deliver the votes of their individual members, but also persuade a larger constituency that what this focused subgroup of them is doing is the right thing.

I think, at least with regard to that latter type of unofficial committee, the Court's concern about only an

indirect benefit applying is less of a concern, because they're effectively representing, if not in fact, in practice, a larger group than the members who've undertaken to pay counsel.

The burden, however, is still upon the movant, even where the movant is that type of unofficial committee, and the other considerations that I previously laid out in connection with the ruling on the IUE also apply. A 503(b)(3)(D) and (b)(4) award is an exception, and the request should be viewed narrowly. I also believe that it should be viewed as far as whether there was a substantial contribution in hindsight, taking into account what happened generally in the case. Of course reasonableness would be construed or reviewed -- the reasonableness of their fees would be reviewed at the time that the fees were incurred.

Having said that, it appears to me that the substantial changes to Delphi's business and ultimately to the plan and to the recoveries for creditors do affect my analysis of whether there was a substantial contribution here from this work. I'm not prepared to say, however, that because the plan that was ultimately confirmed was materially different on the points that were negotiated, that all of the time involving the committee's work here fails to satisfy the direct and material contribution test. But I do have to examine what, in fact, was contributed by the committee to the debtor in the case from today's perspective.

I also conclude that the debtors' and the official committee's agreement to not object to the unofficial committee's fees and expenses -- and in fact, it's really two agreements, both at 750,000 dollars each -- was, at the time, not unreasonable. I noted that in the Bayou case, I concluded that "503(b)(3)(D) and (b)(4) may not be used to buy off a pest who did little if anything to advance and in fact may have impeded the proper administration of the case." That's at page 9 of the Bayou decision, and it cites In re Dana Corporation, 390 B.R. 100, 110-111 (Bankr. S.D.N.Y. 2008) as well as In re Granite Partners, 213 B.R. 448-449.

I do not believe, based on my experience in this case, that the unofficial trade committee would have fallen -- fell into that category. They, to the contrary, I think, settled their differences at the appropriate time, and were looking out for not only the members of the committee but the larger group of trade creditors.

That being said, I believe that the work that they did that was appropriately compensable, given the facts here, consisted of organizing themselves because they knew that they had an issue to deal with and dealing with the absolute priority and subordinated bond issues, or the topper issues. Primarily that was done in connection with the first agreement. That work was done in connection with the first agreement. There was an element, also, of their work that related to post-

petition interest as well as dealing with sorting through the objections or the process for objecting to trade claims.

Clearly, the post-petition interest work, as it turned out, had no benefit to anyone, given the distributions in this case. And I think that most of the concerns with the second EPCA also fall into that category. It was more a monitoring function and making sure that there were not further problems sneaking in that had been previously beaten back.

It's difficult for me to parse out from the time records, based on the foregoing, what should be specifically allowed and what shouldn't be. I have to confess, I'm somewhat on the fence about this in terms of directing counsel to do that, as opposed to my taking a stab at it. But I don't think that's worthwhile here. I think it's -- I think I should rule on a specific amount. And I'll do that in light of two other factors that I haven't mentioned yet, although I think I addressed them in oral argument.

The first is that if there had not been the basic deal struck that led to the first agreement by the debtor and the unsecured creditors' committee to support 750,000 dollars of substantial contribution, I believe the estate would have incurred substantially more fees by the professionals as well as delay in the case as well as fees by the investors, which at that time, were being paid. And I think that on a continuum analysis, that was money saved by the settlement that was

negotiated. I'm comfortable in saying that, again, because of my conclusion that it was not just a hold-up settlement. It was a real settlement dealing with real issues. It wasn't simply a buy-off of a pest, in other words.

Secondly, I think there should be some deduction here for individual claim work, as Mr. Rosner acknowledged. And given the ultimate play-out of the claim review process, I think it's not just individual work, but work on claims -- liquidation generally.

So taking all of those factors into account, I'll grant the application in the amount of 700,000 dollars.

MR. ROSNER: Thank you, Your Honor.

THE COURT: Okay.

MR. ROSNER: I don't have an order, but I'll --

THE COURT: You should e-mail one to chambers, cc'ing the U.S. Trustee and the debtor.

MR. ROSNER: Okay.

THE COURT: Debtor's counsel.

MR. ROSNER: Thank you very much, Your Honor.

THE COURT: Okay. Thank you.

MR. MEISLER: Thank you, Your Honor. That concludes the omnibus hearing.

THE COURT: Okay. Thank you.

MR. MEISLER: And we can turn to the claims hearing.

THE COURT: Let me get my other notebook. Does anyone

want to take a break? Do you all -- all right. We can continue then. Okay.

MR. LYONS: Good afternoon, Your Honor. John Lyons on behalf of the reorganized debtors. This is our thirty-third claims hearing, Your Honor. And we have three matters that are currently contested. The rest of the matters have been adjourned. Two of the matters, I believe, are going to require some argument, and counsel -- and in the case of Mr. Luecke, he's here and present -- there will be some oral argument. The third matter, I'm hoping is rather straightforward and we can dispatch with that --

THE COURT: Okay.

MR. LYONS: -- rather quickly. Your Honor, item number 11 on the agenda relates to the claims of Jose and Martha Alfaro.

THE COURT: Right.

MR. LYONS: Your Honor, this relates to an accident that occurred prepetition involving a Chevy Silverado. Your Honor, we have two bases to object to the claim that was filed. The first is procedural. The claim was filed late. It is in essence a duplicate of a timely filed claim that was expunged earlier. And again, Your Honor, it has passed the bar date. As we have briefed, we do not believe there is excusable neglect.

And the second point is more substantive. When Delphi

filed for Chapter 11 and the automatic stay was in place, General Motors continued to litigate this claim. There is a common central issue that underpins any liability against any of the defendants, and that is whether the car -- there was a defect that caused the injuries. General Motors filed a motion for summary judgment. They filed a subsequent motion for expedited consideration. The Alfaros ultimately did file a response, and the district court did rule on the matter and found that there was no defect and accordingly granted summary judgment.

THE COURT: So you're alleging defensive collateral estoppel or issue preclusion?

MR. LYONS: Precisely, Your Honor.

THE COURT: Okay.

MR. LYONS: And we believe all the elements have been met. The one element, which is the opportunity to litigate, we believe has been challenged by the Alfaros, and I'll let them speak to it. But again, Your Honor, we believe that there was plenty of opportunity to litigate. They actually did litigate it. And although they disagreed with the outcome and maybe the conduct their lawyer had in that proceeding, nonetheless, Your Honor, we believe that the issue of preclusion concept fully applies here.

THE COURT: Okay. Do I have counsel for the Alfaros on the phone or are they present?

UNIDENTIFIED ATTORNEY: No, Your Honor, we're present.

THE COURT: Okay. You can come up then.

UNIDENTIFIED ATTORNEY: Well, my colleague stepped out. We were thinking we were third on this --

THE COURT: Okay.

UNIDENTIFIED ATTORNEY: -- portion of the schedule.

THE COURT: That's fine. I'll hear you in a moment.

UNIDENTIFIED ATTORNEY: Okay. I'll go find him.

THE COURT: That's fine.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

THE COURT: Okay. I'll remember Mr. Lyons' argument.

MR. LYONS: Okay, Your Honor, well, then, why don't we turn to the second matter, which again, I think will be more easily dispatched. And that's the claim of Marc Eglin, and that's item number 12 on the agenda. Your Honor, Mr. Eglin's claim relates to a 2,000 dollar relocation claim --

THE COURT: Right.

MR. LYONS: -- that he wants to collect. Your Honor, we believe that that claim is not appropriate for the reason that entitlement to the 2,000 dollars was predicated upon that there would not be any medical benefits paid at the time of separation. In his proof of claim, Mr. Eglin attached the separation agreement, which was effective January 1st. He further notes that -- in his proof of claim, that medical benefits ceased on April 1st. So therefore, by his own

admission, he was employed at the time of the separation, and therefore was not entitled to the 2,000 dollars.

THE COURT: Okay. Is Mr. Eglin present or on the phone? No. I agree with the debtors on this claim objection. The separation agreement, which is clearly the basis for Mr. Eglin's claim has an exception for the -- well, it's not really an exception. The 2,000 dollar transition assistance payment only kicks in if the employee is not eligible for health care and retirement at the time of his separation. So given that he was in fact eligible by his own admission and that he received health care benefits through April 1, 2009, the separation agreement has been complied with by the debtors. And they don't owe the 2,000 dollar transition assistance payment.

MR. LYONS: Thank you, Your Honor. We'll submit a separate order on that.

THE COURT: Okay.

MR. LYONS: Well, then we'll jump to the last matter, which is the claim of Mr. James A. Luecke. That's item 13 on the agenda. And, Your Honor, if you recall, last time we were here, you wanted some further briefing on section 96 -- or paragraph 96 of the National Agreement -- the UAW agreement.

THE COURT: Right. I do remember.

MR. LYONS: We did provide that to Your Honor. Still, there is no -- in the debtors' view -- any entitlement to this separation pay or this -- or for lost wages, I should say, over

time.

MR. LUECKE: May I step up here, Your Honor?

THE COURT: Oh, yes. Step right up.

MR. LUECKE: Sorry -- excuse me for interrupting.

THE COURT: That's okay.

MR. LUECKE: Let me get into the mix here a little bit.

THE COURT: Are you Mr. Luecke?

MR. LUECKE: Yes, I am.

THE COURT: Okay.

MR. LUECKE: Mr. Luecke, for the record. I'm appearing here in person.

MR. LYONS: And, Your Honor, I'm certainly happy to turn over to Mr. Luecke. But again, I just wanted to make the point that we still don't believe there's any entitlement or any right in here that would create a legal right of Mr. Luecke to collect this money from the debtors.

And even if it were a grievance under the UAW agreement, that grievance would be assumed by GM when they did so under the modified plan to take all grievances under the collective bargaining agreements.

MR. LUECKE: I don't object just to the grievance. I object to the malicious deskilling of my job title from journeyman electronic technician to electronic technician in training. So I kind of have an objection to that. So I feel

like that I'm due a payment for lost wages as a result of that malicious intentional deskilling. Do you have that in your paperwork?

THE COURT: But when you say -- I mean, is that based on the --

MR. LUECKE: That's based on the --

THE COURT: -- the reply -- the reply -- or the additional pleading that I asked the debtors to submit states that you were a skilled person in training. Or I didn't --

MR. LUECKE: Yeah, I was deskilled -- I was hired in as a --

THE COURT: But does it -- but as a -- assuming that you are not a person in training but a person who is trained --

MR. LUECKE: Yes.

THE COURT: -- and that the debtors' argument is that the deal with the union --

MR. LUECKE: Um-hum.

THE COURT: -- only covered -- for this plan, only covered two people, and it wasn't your job description.

MR. LUECKE: Yes, that's actually a false statement by the counsel there.

THE COURT: But what is -- what do you have to counter that? Because they attach the deal.

MR. LUECKE: Okay. I'll go on record here as being a skilled trades chairman of a skilled trades committee.

THE COURT: I'll accept that.

MR. LUECKE: Okay.

THE COURT: That's fine.

MR. LUECKE: Okay. That I had firsthand knowledge of the MOUs and memorandum. And it specifically stated that there were twenty-three available skilled trades positions for bargaining units and tradesperson of that Delphi plant, and not just two pipe fitters. So they actually abrogated that contract.

THE COURT: But do you have -- I mean -- but there's a -- what they attach is the underlying CBA provision that has the parties bargaining when there's --

MR. LUECKE: Yeah, there --

THE COURT: -- a transition of -- or shutdown of a facility. And then they attach the agreement whereby they did bargain through that. And they -- there's a provision in there that talks about the transfer of the skilled people -- you know, the twenty-six. And it says, of those, the two people or the two slots, the two provisions, will be the ones who are to transfer.

MR. LUECKE: No, that was inequitable too, as stated by the --

THE COURT: Well, it's the agreement, though, right? I mean --

MR. LUECKE: It was not a signed agreement -- that

agreement that is presented by the defense counsel has no signatures on it, and it's just a hearsay argument by the defense or the debtors' attorneys here.

THE COURT: Okay. Was it signed? I didn't think it was signed?

MR. LYONS: Your Honor, the copy I have is not signed.

THE COURT: Okay.

MR. LYONS: It was provided by the company.

THE COURT: All right.

MR. LYONS: You know, again, Your Honor, if there's any --

THE COURT: Do you have anything that's to the contrary of that agreement?

MR. LUECKE: Yes. I'll swear under declaration or under penalty of perjury that I had firsthand knowledge as being the chairman of the skilled trades committee, that there was to be twenty-three available positions in the 96(a) transfer agreement, not just two pipe fitters.

THE COURT: Well, I mean the proper evidence of this is the actual agreement.

MR. LUECKE: That's the agreement that I, as the skilled trades chairman was presented with.

THE COURT: Well, but there's got to be an agreement in writing, right, somewhere?

MR. LUECKE: Ask the defense counsel here --

THE COURT: Well, I mean, the union must have an agreement, right, one way or the other?

MR. LUECKE: Well, if there is no agreement, then Delphi here is in definitely breach of that contract.

THE COURT: What contract?

MR. LUECKE: Number one, the 96(a) transfer agreement, and number one the contract personally what I have at Delphi as being an employee of Delphi.

THE COURT: Well, I'm going to have to -- I'm going to adjourn this to see if there's an actual agreement.

MR. LUECKE: Okay.

THE COURT: On the other claim, I mean, it's not really defamation. No one's -- no one reads this except you and me and them. It's not -- it doesn't affect your reputation.

MR. LUECKE: Well, yeah. Back to deskilling. I was deskilled without notice. That --

THE COURT: But that's -- they got the thing wrong in the pleading. It doesn't affect anybody.

MR. LUECKE: Okay. Yes, it does. And then we have also --

THE COURT: But, no. How? How does it affect anyone?

MR. LUECKE: -- we have a local agreement here too. And it affected me by denying me a rightful overtime work and wages.

THE COURT: No, what they put in their pleading just now?

MR. LUECKE: What -- whose pleading?

THE COURT: About they saying that they're -- I'm sorry. What are you referring to when you say deskilling?

MR. LUECKE: Okay. I was hired in as a journeyman electronic technician.

THE COURT: Right.

MR. LUECKE: That's a skill level up here. They maliciously deskilled me with no notice --

THE COURT: No, but when? When? What is the date of when you say they deskilled you?

MR. LUECKE: Okay. The date of when they deskilled me was 1-8 -- I have the deskilling notice here. Excuse me while I pile through my papers here. I'm trying to make it quick for you.

THE COURT: That's all right. No problem.

(Pause)

THE COURT: Is that -- is the deskilling --

MR. LUECKE: Here.

THE COURT: -- set forth in your proof of claim?

MR. LUECKE: Yes, it is. We got approximately on or about 1/18 of 2008. So January 18th approximately -- on or about that date.

THE COURT: And what happened then?

MR. LUECKE: I was deskilled from journeyman status down to an in-training status, thereby denying my right to overtime work provided by --

THE COURT: Okay.

MR. LUECKE: -- a local agreement here between Delphi Corporation and the Local 438. This is the agreement --

THE COURT: All right.

MR. LUECKE: -- right here.

THE COURT: Okay. Now, I thought you were referring to something in their pleading.

MR. LUECKE: Okay.

THE COURT: As opposed to something that happened back in January of '08.

MR. LUECKE: Um-hum.

THE COURT: Now, Delphi -- and that was part of your griev -- was that part of your grievance? Did you file a grievance on that one?

MR. LUECKE: Well, yeah, initially. I do have the grievance here.

THE COURT: All right. Is that something that the new entities picked up on even though it happened back in 2008?

MR. LYONS: Well, Your Honor, the provisions of the modification order do include all grievances. They went along with the labor MOUs.

THE COURT: Existing grievances?

MR. LYONS: Yes. And I refer you to -- it's the modification approval order, paragraph 61.

THE COURT: All right.

MR. LYONS: And it says: "Pursuant to the modified plan, upon the effective date, and notwithstanding any other provisions of the MDA, the applicable labor MOUs, which will include all related collectively bargained agreements and obligations including grievances, shall be assumed and assigned to the GM buyer.

THE COURT: All right. So was that grievance ever withdrawn or is it still pending?

MR. LUECKE: That grievance was -- who know? They obstructed --

THE COURT: No, no. Did -- you didn't withdraw it?

MR. LUECKE: I never withdrew a grievance, but I was told -- I don't know what I was told.

THE COURT: And was it ruled on by anybody?

MR. LUECKE: No, it was thrown out.

THE COURT: By whom?

MR. LUECKE: I don't know who threw it out.

THE COURT: Well, the reason I'm asking you this is that it appears to me that the buyer -- and is the GM buyer or is this the other buyer?

MR. LYONS: The GM buyer.

MR. LUECKE: This happened prior to the GM --

THE COURT: No, I'm saying --

MR. LUECKE: -- purchase agreement.

THE COURT: -- what the debtor is saying is that GM assumed this obligation. Have you pursued it with GM?

MR. LUECKE: I have no knowledge that GM pursued -- that the buyer or purchase agreement of General Motors included this.

THE COURT: Okay. Well, they're saying it did.

MR. LUECKE: Well, I'm saying this happened prior to any purchase agreement with General Motors.

THE COURT: I know. But the language they're quoting to me, and this is my recollection --

MR. LUECKE: Well, I'm going to object to that then.

THE COURT: -- well, no, it's a good thing for you. You'd rather have GM pay you, right, than --

MR. LUECKE: I guess. Well, yeah --

THE COURT: So this is what I suggest, is that we adjourn this again --

MR. LUECKE: Okay.

THE COURT: -- you pursue this with GM, without waiving your rights against the debtor.

MR. LUECKE: Okay.

THE COURT: And both -- and everyone hunt for the actual agreement.

MR. LYONS: Your Honor, exactly. And if this --

THE COURT: Okay.

MR. LYONS: -- you know, if we can get a piece of paper that shows what Mr. Luecke is saying, you know, we'll certainly take a look at it.

THE COURT: All right. And also, if you get a signed version of what you submitted to me --

MR. LYONS: Yes.

THE COURT: -- he should take a look at it. Because I think the problem with what they submitted to me was that it wasn't signed. That's really the issue.

MR. LYONS: Right.

THE COURT: I think if it had been signed, you would have lost on that point --

MR. LUECKE: Um-hum.

THE COURT: -- on the transfer point, not on the grievance point. That's a separate issue. But you should look at -- you should follow through with GM on that. Are you still in the union?

MR. LUECKE: Yes, I am.

THE COURT: All right, so you should follow thr -- I mean, Mr. Lyons will show you the language --

MR. LUECKE: Yes.

THE COURT: -- and that should enable you to present this grievance to GM.

MR. LUECKE: I had a -- well, I contacted the union as

well as -- well, General Motors. And they find there's no issue available at this point.

THE COURT: Well --

MR. LUECKE: So where do I stand here? I'm just -- I'm standing at that Delphi was the last party responsible for the --

THE COURT: Not necessarily. I --

MR. LUECKE: Okay. Well, maybe they can help with clarification.

THE COURT: Yes, they can help you with GM.

MR. LUECKE: Okay.

THE COURT: Okay.

MR. LUECKE: Well, can you put a stipulation in here that the debtors --

THE COURT: I'm telling them to do it.

MR. LUECKE: Okay.

THE COURT: Okay?

MR. LYONS: And I will let him know --

THE COURT: And if GM comes up with some argument that says we're not responsible, that I accept, then you can still pursue your claim against the debtor.

MR. LUECKE: Okay. Very good.

THE COURT: I mean, I haven't ruled on it yet, but --

MR. LUECKE: Okay.

THE COURT: -- it's not dead.

MR. LUECKE: Okay.

THE COURT: Okay? Lastly, and I appreciate you came in for this hearing, hopefully you won't have to come in again. I do take people by phone, although you're going to be testifying too, maybe, so I don't take testimony by phone, usually. But if there's a real problem, I might do it here, because I've seen you. But let's adjourn this for -- not to the 30th, but the next one.

MR. LYONS: The July hearing?

THE COURT: Yes.

MR. LYONS: Sure, Your Honor, we'll do so.

MR. LUECKE: Okay. Very good. Thank you.

MR. LYONS: Thank you, Your Honor.

THE COURT: Okay.

MR. LYONS: Your Honor, I think we're back to the Alfaro matter.

THE COURT: Okay.

MR. LUECKE: Okay, I look forward to hearing back on you on --

THE COURT: Well, you should -- you should get Mr. Lyons' card so that --

MR. LUECKE: Okay.

THE COURT: -- because what you really need to do -- I mean, you look like you know how to submit a grievance.

MR. LUECKE: Yeah, yeah.

THE COURT: So you should get the language from the order --

MR. LUECKE: Okay.

THE COURT: -- that has New GM picking up -- the GM buyer picking up the grievances, and then you can send it to them.

MR. LYONS: And we'll work through that, Your Honor.

THE COURT: Okay.

MR. LYONS: I guess for edification of counsel, I did just go through the summary of our motion and --

THE COURT: All right. That's fine. So we're back on the record, and let's pretend we're starting from the beginning on the Alfaro claim and the objection to it.

MR. LUECKE: Do you want to take over here?

MR. LYONS: Yes, Your Honor. In sum, again, the basis of our objection is twofold. We have a procedural objection, the basis that the claim that currently is subject to the objection is late. There had been two other proofs of claim that were filed that were both expunged. And moreover, the merits of the claim itself, we believe, are precluded under the doctrine of issue preclusion by reason of the district court's ruling on summary judgment, which held there's no genuine issue of fact of a defect, which again, would underpin any liability, albeit, GM or Delphi or any of the other defendants.

And with that, Your Honor, I'll cede the podium to the

Alfaros' counsel.

THE COURT: Okay.

MR. BENDINELLI: Good afternoon, Your Honor. Your Honor --

THE COURT: You can stand there if you want. Wherever you're comfortable.

MR. BENDINELLI: Thank you. Mr. Lyons and I had stipulated that Mr. Alfaro could offer some testimony by way of affidavit. And I have that for the Court, if I may approach?

THE COURT: Okay.

MR. LYONS: And we have no objection, Your Honor.

THE COURT: Is this a new -- yes, this is a new aff -- this is not in the pleadings, right?

MR. BENDINELLI: Correct, Your Honor.

THE COURT: Let me just take a quick look at it.

MR. BENDINELLI: Your Honor, Mr. Alfaro is a -- I'm sorry, I thought you wanted to hear from me.

THE COURT: I just want to take a quick look at what you just gave me.

MR. BENDINELLI: Yes, sir.

THE CLERK: Excuse me, sir, can you state your appearance?

MR. BENDINELLI: Oh, Marc Bendinelli on behalf of Mr. and Mrs. Alfaro.

THE COURT: Okay, I've read it.

MR. BENDINELLI: Your Honor, Mr. Alfaro's a seventy-year-old retired chief of police from Goodland, Texas. And what happened in this case, he suffered catastrophic injuries from a one-car accident where the restraint system failed to activate. And Delphi was the manufacturer of a component involved in the restraint system.

On July 31, 2006, Mr. Alfaro submitted a claim for one point -- a proof of claim for 1.5 million dollars. Subsequent to that, on January 4, 2007, Mr. Alfaro's counsel, attorney Don Staab from Kansas, approached Mr. Alfaro requesting that he reduce his proof of claim to a half million dollars. Mr. Alfaro -- Mr. and Mrs. Alfaro refused to give the attorney authority to do so, did not sign the document that he had with him. And nonetheless, Attorney Staab submitted -- fraudulently submitted a proof of claim form.

And if you look at the difference between the first and the second claim form, and they are attached to the debtors' exhibits in the supplemental filing --

THE COURT: I've reviewed it. I've reviewed both claims.

MR. BENDINELLI: Okay. Well, you can see that it's a rudimentary alteration on the second claim form, and he just -- it's the same form. He just whited out the one --

THE COURT: The one.

MR. BENDINELLI: -- yes. At that time the first proof

of claim was expunged and the second proof of claim was on the record. And subsequent to that, Your Honor -- I don't know the technical terminology in bankruptcy court, and I thank the Court for indulging a non-bankruptcy attorney time in this court, indulging my lack of correct bankruptcy terminology.

THE COURT: Okay.

MR. BENDINELLI: What happened subsequent to that, six months later, without the benefit of counsel, Mr. Alfaro filed another proof of claim form trying to undo the damage that Attorney Staab had done with the second proof of claim. To that claim form, the debtor objected that it was filed outside the time line -- or it was time barred.

Also, the debtor is arguing that this claim has been adjudicated in another forum. Don Staab -- Attorney Staab had also -- was also litigating this case in federal district court in Colorado. He failed to respond to a motion for summary judgment filed by General Motors in this case. General Motors -- so this case was not -- in the Tenth Circuit, this claim was not litigated to conclusion. Don Staab failed to respond to a motion for summary judgment. It was filed on July 21st, '06. The responsive pleading was due on August 10th. And no response was filed.

General Motors then filed a motion to adjudicate the summary judgment motion to which -- and finally plaintiff's counsel responded, and the Court lambasted plaintiff's counsel,

basically, Don Staab, and said that it was an outrage that he allowed his client to be dismissed on summary judgment and then dismissed the plaintiff's claims. Don Staab and his co-counsel then filed a motion to reconsider, and the Court responded with another order denying that motion, and saying that you failed to respond to a summary judgment motion and you failed to present any evidence.

So that claim was never adjudicated, Your Honor. Those are -- the two orders issued by the Honorable Marcia Krieger is attached as Defendant's Exhibits 6 and 8. Those are the two orders issued by Judge Krieger. And you see that the -- I'm sorry, Your Honor, it's 8 and 11 -- you can see that Mr. Alfaro's claim was never adjudicated in that court.

Mr. Alfaro, he suffered over 800,000 dollars in medical bills as a result of this car crash. And the other thing, Your Honor, General Motors at the time, they knew that the -- this -- I think it's an SDM module -- it was currently under a recall. So General Motors was aware that this was a faulty device manufactured by Delphi. And because they could not argue the merits, what they did was they attacked on a technical defense. And this was in the summary judgment motion. They claimed that plaintiff's expert failed to allege with specificity the precise defect of the module and that the counsel did not claim that the defect caused the harm.

When the summary judgment motion was filed, Don Staab

should have done a couple things. He should have probably calendared his response. Additionally, he should have contacted the expert whose report was attacked by General Motors, because it failed to identify with specificity the defect. And Mr. Alfaro found out later that the reason that Attorney Staab could not contact that expert on their research out of California, is because there were outstanding bills that Attorney Staab had racked up and failed to pay.

So, Your Honor, the debtors' argument basically is that this case has been failed -- I mean, has been litigated in another jurisdiction. And that's an inaccurate representation. Their other argument that the third claim form filed by Mr. Alfaro should be time barred, Your Honor, we're requesting that the first proof of claim be reinstated.

THE COURT: On what grounds?

MR. BENDINELLI: Your Honor, this is a court of equity, and --

THE COURT: But --

MR. BENDINELLI: -- and when -- the standard is excusable neglect. That's a very low threshold.

THE COURT: It's not really. The standard for having the first claim apply is Rule 60. There's been an order disallowing the claim.

MR. BENDINELLI: Your Honor, it was disallowed by fraudulent conduct of an attorney.

THE COURT: Did your clients get notice of the objection to their claim?

MR. BENDINELLI: No, sir. Within six months -- this all happened within a six-month period when Attorney Staab filed this claim form and then Mr. Alfaro, without counsel, tried to fix it by filing a third proof of claim.

THE COURT: But --

MR. BENDINELLI: Procedurally, what he probably should have done is ask that the second proof of claim be stricken and the first claim of form -- proof of claim that was expunged be reinstated. And so he made a procedural error, I believe. But, Your Honor, Delphi is now enjoying paying five cents on the dollar for their claims. And you have a retired chief of --

THE COURT: But that was the other question I had -- I had another question for both of you. This is not covered by insurance?

MR. BENDINELLI: No, sir, because the claim was never litigated. It got dismissed in district court.

THE COURT: No, no. Is a claim -- would you care if this claim was covered by insurance, if they went against the insurer?

MR. LYONS: Well, Your Honor, actually the way the insurance works, it's a -- it's what's called a fronting policy, I believe. So it actually would be paid -- if

insurance applies here, and I'm not so sure of that --

THE COURT: No, but assuming --

MR. LYONS: -- but ultimately it still would impact DPH, even if it were to be covered by insurance, I believe. But you know, Your Honor, we really have not looked into this particular claim.

MR. BENDINELLI: They're probably self-insured, with maybe a million dollar retention then with an excess policy, Your Honor. So this would be Delphi's responsibility.

THE COURT: All right. So I come back to, you're basically saying to me that the wrong proof of claim was disallowed back when the claim that was first filed was disallowed, right?

MR. BENDINELLI: No, Your Honor, it was --

THE COURT: I mean, that's really what you're saying. You're saying that the second claim was a bogus claim. It wasn't authorized --

MR. BENDINELLI: Correct.

THE COURT: And that the first claim shouldn't have been disallowed. If there was any claim that should have been disallowed, it was the second one that should have been disallowed?

MR. BENDINELLI: Correct.

THE COURT: So it seems to me, then, that what your complaint is, is that the first claim should not have been

disallowed.

UNIDENTIFIED ATTORNEY: Your Honor --

THE COURT: And that's an order that I entered. You have a right to move for relief from that order under Rule 60, which is incorporated by Bankruptcy Rule 9024. I don't -- but from what you're telling me, I don't have the facts to make that determination.

MR. BENDINELLI: It's covered in the affidavit that the first claim --

THE COURT: No, no. You've got to look at Rule 60 and see whether you fit within it. I don't know whether you do. I mean, that's not how this is couched.

The second question I have is what authority do you rely upon for the proposition that the district court's ruling -- the Colorado court's ruling -- is not collateral estoppel? But let's deal with the first issue first.

MR. BENDINELLI: Well, Your Honor, I believe that when something like this happens in the course of litigation, I believe Your Honor has wide discretion to determine whether you believe that claim was litigated to conclusion.

THE COURT: I'd really like to see cases as opposed to people just telling me I have wide discretion to do things.

MR. BENDINELLI: Okay.

THE COURT: Now, this was a case where it wasn't just a simple default, all right? There was opposition filed that

the Court treated as opposition to the summary judgment motion, and then there was a motion to reconsider. And yeah, it was a case where the debtor -- I'm sorry, the debtor -- the plaintiff had not paid the expert, and I'll accept that counsel wasn't doing a good job. But based on my experience with collateral estoppel, in default situations even, which I'm not sure this is, in those contexts, the courts say, well, I'm not going to let the party get away with saying that it's not binding just because they choose not to -- at this stage, not to pay their expert. So I'd really like to see some cases before I accept your argument that this isn't binding.

But on Rule 9024, is this mistake inadvertent surprise or excusable neglect? Is this newly discovered evidence? Is this fraud by an opposing party? Is the judgment void? Or has the judgment been satisfied, release or discharged? No. I mean, I'm just -- I'm not sure there's a basis here for getting relief under Rule 60. Plus which it's happened -- you know, it's six months later.

MR. BENDINELLI: Well --

THE COURT: I just -- you know, there are -- it's not couched as a Rule 60 motion, and that's the reason you're not addressing these points. But I don't see -- I mean, that's the argument you're making is that they disallowed the wrong claim.

MR. BENDINELLI: Yes, Your Honor. And I mean that -- you know, excusable neglect, inadvertence, mistake, those are a

very low threshold for granting the Court the discretion to set aside a prior order. I mean, it's not like clear --

THE COURT: But who's --

MR. BENDINELLI: -- convincing --

THE COURT: -- but who's -- but that's the point. You don't have -- I don't have the facts at all on what happened in connection with that prior order as far as who got notice and I mean -- I'm assuming -- the debtor's practice is to give the claimant notice. That's part of my claims procedures rules -- individualized notice, and also notice of the entry of the order disallowing the claim.

MR. BENDINELLI: He was represented at the time, so --

THE COURT: But I don't know whether he got notice himself or just to his lawyer.

MR. LYONS: Your Honor, if I may clarify --

THE COURT: You need to stand up, too.

MR. LYONS: I'm sorry, Your Honor. The proof of claim forms actually had -- the address was Jose C. and Martha Alfaro, c/o Don C. Staab, who was the lawyer.

THE COURT: Okay.

MR. LYONS: So on the proof of claim forms -- and that -- and I can represent, we have a certificate to the effect that we did serve the omnibus objection, we did serve the order expunging the claim on that address. So Mr. Alfaro did --

THE COURT: On the lawyer.

MR. LYONS: -- to the address. Now, Your Honor, the third claim that they filed to remedy the fraud still has Mr. Staab as the addressee on the claim form. So there's a little bit of a contradiction there. You know, here the first two claims are expunged. They filed a third one to remedy the supposed fraud, and they put Mr. Staab on the proof of claim form on the address line.

THE COURT: Okay. All right.

MR. LYONS: So there's a little consternation there. And I think, Your Honor, frankly, the collateral estoppel, we did brief the issue and the standard in our motion. And I think it's clear. You know, they may well have a claim for malpractice against their lawyer, but this was litigated. And they did respond to the motion for summary judgment and attach the plaintiff's expert's report. And the district court even looked at a motion to reconsider and looked at all this, and entered summary judgment. So the test is an opportunity to litigate. They had the opportunity to litigate and in fact did, albeit maybe not perfectly.

MR. BENDINELLI: Your know, Mr. Alfaro was represented by a lawyer who was conducting fraudulent activities, who was later censured by the Kansas State Bar for his activities involving this case. And it would be an injustice to punish Mr. Alfaro for being defrauded by an attorney who did not

litigate this case to a conclusion. There was -- no trier of fact determined whether this mechanism was the cause of Mr. Alfaro's injuries, which it was.

THE COURT: Well, that was the summary judgment motion, right?

MR. BENDINELLI: No, sir. The summary judgment motion was based on a technical defense asserted by GM that the expert report did not allege what -- with specificity, how the failure occurred. And that --

THE COURT: But isn't that what --

MR. BENDINELLI: -- that failure --

THE COURT: -- wasn't that the plaintiff's burden in a trial? Wouldn't that have been the plaintiff's burden in a trial?

MR. BENDINELLI: Well, yes, Your Honor. But it was Mr. Staab's duty to respond to an MSJ, which he failed to do. This case was not litigated to conclusion.

THE COURT: But --

MR. BENDINELLI: It was attacked --

THE COURT: -- that's because the plaintiff didn't put forward an expert's report --

MR. BENDINELLI: -- well, Your Honor --

THE COURT: -- except for what they deemed to be the opposition. So isn't that enough?

MR. BENDINELLI: I don't believe so, Your Honor. I

believe --

THE COURT: On what basis?

MR. BENDINELLI: -- if you have a member of the Bar who is defrauding their clients --

THE COURT: That's a separate issue. He didn't defraud them on this, on the summary judgment motion. There's no fraud there.

MR. BENDINELLI: Yeah, well, Delphi was also no part -- no longer a part of the lawsuit, but you know, it was dismissed as to --

THE COURT: That's collateral estoppel.

MR. BENDINELLI: -- General Motors. But, Your Honor, Mr. Alfaro was not afforded his day in court. He never had a chance to present his claims against General Motors and Delphi. I mean, if he was foolish enough to file pro se, I can understand. But he was relying on a member of the Bar.

THE COURT: I just -- you're going to have to give me a case under the right law.

MR. BENDINELLI: Well, Your Honor, we have In re Emmerling, 223 B.R. 860 (2d Cir. 1997) case that just says that in the absence of showing meaningful prejudice to Delphi, the Court is allowed to rectify a wrong --

THE COURT: No, but that's not a -- I mean a collateral estoppel case.

MR. BENDINELLI: Your Honor, I'd like to have the

opportunity to submit supplemental authority by close of business tomorrow.

THE COURT: Sure. And I may -- if the debtors want to respond to that, they should ask chambers and I'll tell them whether they need to or not.

MR. LYONS: Thank you, Your Honor.

THE COURT: Okay. As far as the excusable neglect or late claim issue, this is not a late claim case. There's no showing of excusable neglect here. The issue is really one of whether the wrong claim -- the timely claim was improperly disallowed. And that's an issue under Rule 60.

MR. BENDINELLI: But we didn't file a Rule 60 motion so --

THE COURT: I know.

MR. BENDINELLI: -- so then he's free to still file one, then, correct?

THE COURT: He is, if he thinks he can win one. I'm not sure he can.

MR. BENDINELLI: Okay.

MR. LYONS: Although, Your Honor, it may be moot if you --

THE COURT: Well, yes. I mean, I think -- frankly, you ought to deal with -- I mean, look, these claims are being dealt with for a while. So there's no reason for you to incur the cost of preparing a Rule 60 motion until I rule on the

collateral estoppel point.

MR. BENDINELLI: Your Honor --

THE COURT: You may not have -- there may not be any reason to -- if I find it's collaterally estopped, then that's the end of the game.

MR. BENDINELLI: I understand. And I appreciate the opportunity to present supplemental authority. But I believe that authority is going to say that the Court can -- that the debtor has to show that he's been -- he's somehow been prejudiced.

THE COURT: No, it's collateral estoppel. Collateral estoppel's a whole different -- that's so you don't waste the Court's time. If something's already been decided, it's res judicata.

MR. BENDINELLI: I understand, Your Honor. I understand.

THE COURT: And the parties should also focus on the applicable law. I'm not sure this is Colorado law. I'm sitting in New York. So I think it probably should be New York collateral estoppel, but you guys can focus on that.

MR. LYONS: Your Honor, we will. I think the thought was that because the judgment was entered in Colorado --

THE COURT: Well, no, I understand --

MR. LYONS: -- but we will look at that.

THE COURT: -- but I'm the one that's going to be

applying the collateral estoppel.

MR. LYONS: We'll take a look at that, Your Honor.

THE COURT: Okay.

MR. LYONS: Thank you.

THE COURT: All right. So you can e-mail that to chambers by end of the day tomorrow.

MR. BENDINELLI: Okay.

THE COURT: And I'll give the debtors till end of the day Tuesday to let me know whether they want to respond to it or not. And I'll probably issue a ruling later that week.

MR. BENDINELLI: Okay. And we may simultaneously submit a -- just a couple-page Rule 60 motion.

THE COURT: If you want to get that on file, that's fine.

MR. BENDINELLI: Okay.

THE COURT: Okay.

MR. BENDINELLI: Thanks, Your Honor. Thanks for your indulgence.

MR. LYONS: Thank you, Your Honor.

THE COURT: Okay.

MR. LYONS: That's all we have. Thanks for your time and --

THE COURT: Okay.

MR. LYONS: -- and effort.

(Proceedings concluded at 3:07 PM)

I N D E X

RULINGS

IUE-CWA Substantial Contribution Application Denied in Full	122	12
Fee application granted in amount of 700,000 dollars	161	11
Objection to Marc Eglin's claim is approved	165	13

C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a true and accurate record of the proceedings.

Hana Copperman

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